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The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.94.3816 and 8.94.3817 pertaining to the administration of the Montana Coal Endowment Program (MCEP) – Emergency Grants and Planning Grants	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 18, 2023, at 10:00 a.m., the Department of Commerce will hold a public hearing via zoom to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

Video:

https://mt-gov.zoom.us/webinar/register/WN_Fq-BM94UTHKYwAmmaGTcaQ

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m. May 16, 2023, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail DOCAdministrativeRules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

8.94.3816 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE ~~TREASURE STATE~~ MONTANA COAL ENDOWMENT PROGRAM ~~(TSEP)~~ (MCEP) – EMERGENCY GRANTS (1) The Department of Commerce adopts and incorporates by reference the ~~2021 and 2023~~ 2025 ~~Biennia~~ biennium Emergency Grant Application Guidelines for ~~TSEP~~ MCEP Emergency Grants as rules for the administration of the ~~2021 and 2023 Biennia~~ 2025 biennium ~~Treasure State~~ Montana Coal Endowment Program – Emergency Grants.

(2) remains the same.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, ~~Community Development Division~~ Community MT Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the ~~Community Development Division~~ Community MT Division web site at ~~http://comdev.mt.gov/Programs/TSEP/EmergencyGrants~~

https://comdev.mt.gov/Programs-and-Boards/Montana-Coal-Endowment-Program/Emergency-Grants.

AUTH: 90-6-701, MCA
IMP: 90-6-701, MCA

REASON: It is reasonably necessary to amend this rule to reflect updated requirements to the guidelines and to implement the program name change as required in 17-5-703, MCA, of the 67th legislative session.

8.94.3817 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE MONTANA COAL ENDOWMENT PROGRAM (MCEP) – PLANNING GRANTS (1) The Department of Commerce adopts and incorporates by reference the Infrastructure Planning Grant Application and Administration Guidelines for MCEP Infrastructure Planning Grants as rules for the administration of the Montana Coal Endowment Program – Planning Grants (May 2023).

(2) remains the same.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Planning Bureau, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Planning Bureau web site at ~~http://comdev.mt.gov/TSEP/PlanningGrants/Applying~~ https://comdev.mt.gov/Programs-and-Boards/Montana-Coal-Endowment-Program/Planning-Grants.

AUTH: 90-6-701, MCA
IMP: 90-6-701, MCA

REASON: This update would permanently change MCEP planning grant awards from a first-come, first-served open cycle to a competitive process of ranking and awarding grants based on a set of criteria. The anticipated outcome is planning grant funds would be prioritized for the highest need and highest impact projects. Additionally, this update would temporarily increase the maximum grant award from $15,000 to $40,000 for the 2025 biennium, which would leverage ARPA water and sewer funding to help communities complete high priority capital improvement plans and preliminary engineering reports. The match requirement would temporarily be reduced from 50% to 20% of total project cost to help communities reduce the time it takes to complete these projects.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bonnie Martello, Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0533; telephone (406) 841-2596; fax (406) 841-2871; TDD (406) 841-2702; or e-mail DOCAdministrativeRules@mt.gov, and must be received no later than 5:00 p.m., May 26, 2023.

5. The Office of Legal Affairs, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person listed in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Amy Barnes
Amy Barnes
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Interim Deputy Director
Department of Commerce

Certified to the Secretary of State on April 18, 2023.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.20.202, 17.20.203, 17.20.204, 17.20.205, 17.20.206, 17.20.301, 17.20.303, 17.20.605, 17.20.802, 17.20.803, 17.20.806, 17.20.807, 17.20.901, 17.20.1301, 17.20.1302, 17.20.1418, 17.20.1426, 17.20.1501, 17.20.1502, 17.20.1503, 17.20.1509, 17.20.1510, 17.20.1511, 17.20.1605, 17.20.1801, and 17.20.1902, and the repeal of ARM 17.4.501 and 17.4.502, and the amendment to Circular MFSA-2 pertaining to modernizing application and notice requirements, allowing for electronic-only submittal and use of modern mapping technologies, eliminating requirements related to temporary construction camps, and general housekeeping updates	)	NOTICE OF PROPOSED AMENDMENT AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On July 25, 2023, the Department of Environmental Quality proposes to amend and repeal the above-stated rules.

2. The Department of Environmental Quality will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Environmental Quality no later than 5:00 p.m. on May 19, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQ_MFSA_Rules_Phase1@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

17.20.202 GEOTHERMAL EXPLORATION PLANS (1) ~~Every~~ Each person shall submit a geothermal exploration plan on April 1, 1975, and each year thereafter to the department in an electronic format acceptable to the department.

~~(2) Two copies along with an electronic copy acceptable to the department of the geothermal exploration plan shall be submitted to the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.~~

~~(3)~~(2) ~~The geothermal exploration plan shall be typed, printed, or otherwise legibly reproduced on 8½" x 11" paper. Maps, drawings, charts, or other documents bound in a geothermal exploration plan shall be cut or folded to 8½" x 11" size.~~ Maps, drawings, or charts may accompany a geothermal exploration plan as separate exhibits in an electronic format acceptable to the department.

~~(4) Typed or offset material shall have a 1½" margin on the binding side and a 1" margin on all other sides.~~

~~(5) All pages in a geothermal exploration plan shall be consecutively numbered. Maps, drawings, or charts accompanying the geothermal exploration plan as exhibits shall be identified as "Exhibit_" and, if comprising more than one sheet, shall be numbered "sheet __ of __."~~

(6) remains the same, but is renumbered (3).

~~(7)~~(4) Any change in plans ~~which~~ that would result in ~~some action prior to the filing of the next geothermal exploration plan shall be reported to the department within 60 days~~ a material increase in any environmental impact or a substantial change in the location of all or a portion of the activities conducted pursuant to the plan shall be reported to the department.

AUTH: 75-20-1001, MCA
IMP: 75-20-1001, MCA

REASON: The proposed amendment to (1) and deletion in (2) and (3) remove the requirement to submit hard copy application material to the department because the department is moving toward electronic submission of application material. The proposed amendment to strike out (4) and (5) is due to the removal of hard copy application requirements as the department is moving toward electronic submission of application material.

The proposed amendment to new (4) specifies what changes to a geothermal exploration plan need to be submitted to the department. Also, the proposed amendment to new (4) removes an arbitrary time line for submission to the department because the statutory reference provides the time line. This proposed amendment makes any changes to a geothermal exploration plan consistent with other types of facilities covered by the Major Facility Siting Act (MFSA).

17.20.203 INITIAL FIELD REPORTS (1) ~~Sixty days before~~ Before the boring of test holes or the initiation of other underground exploration, investigation, or experimentation, related to the possible future development of geothermal resources, every person shall submit an initial field report to the department in an electronic format acceptable to the department.

(2) Within each initial field report shall be included:

(a) a description, including an electronic map in a format acceptable to the department, of the area involved in the investigation shown on a suitable map, and the probable location of test holes, sample sites, access roads, staging areas, areas where trees or soil are to be removed, and all other such activities~~. A suitable map would be one with a scale of 1:24,000, except in unusual cases or situations the department may recommend the scale~~;

(b) and (c) remain the same.

AUTH: 75-20-1001, MCA
IMP: 75-20-1001, MCA

REASON: The proposed amendment to (1) removes the number of days before exploration activities begin that a geothermal exploration application would need to be filed with the department. Currently in the MFSA rules, the only facility to have such application filing timelines are geothermal exploration applications. The proposed amendment would make all facilities covered under MFSA consistent regarding when a facility needs to apply for the department's approval.

The proposed amendment in (2)(a) removes the requirement to submit hard copy application material to the department because the department is moving toward electronic submission of application material.

17.20.204 PERIODIC FIELD REPORTS (1) Sixty days after the initiation of the boring of test holes or the initiation of other underground exploration, investigation, or experimentation, related to the possible future development of geothermal resources, and at 60-day intervals for the duration of the investigation, every person shall submit a periodic field report to the department in an electronic format acceptable to the department.

(2) Each periodic field report for its reporting period shall include:

(a) through (f) remain the same.

(g) the kinds of sampling, such as coring or cuttings taken~~;~~.

~~(h) any other methods or activities which the department may require.~~

AUTH: 75-20-1001, MCA
IMP: 75-20-1001, MCA

REASON: The proposed amendment to (1) adds the requirement that periodic field reports be submitted in an electronic format acceptable to the department because the department is moving toward electronic submission of documents.

The proposed amendment to (2)(h) removes the reference to other items the department may require. The proposed amendment would remove this requirement because it is unnecessary since other items needed by the department should be required in the environmental specifications for the project and consultation with the applicant should occur. The proposed amendment would make all facilities covered under MFSA consistent regarding when a facility needs additional reporting requirements.

17.20.205 FINAL FIELD REPORTS (1) ~~Within 60 days after~~ After cessation of ~~such~~ geothermal investigation, every person shall submit a final field report to the department in an electronic format acceptable to the department.

~~(2) The final field report shall be in an electronic format acceptable to the department. typed, printed, or otherwise legibly reproduced on 8-1/2 x 11" paper. Maps, drawings, charts, or other documents bound in a final field report shall be cut~~

~~or folded to 8-1/2 x11" size. Maps, drawings, or charts may accompany a final field report as separate exhibits.~~

~~(3) Typed or offset material shall have a 1/2" margin on the binding side and a 1" margin on all other sides.~~

~~(4) All pages in a final field report shall be consecutively numbered. Maps, drawings, or charts accompanying the final field report as exhibits shall be identified as "Exhibit ____" and, if comprising more than 1 sheet, shall be numbered "sheet ___ of ___."~~

(5) and (6) remain the same, but are renumbered (2) and (3).

AUTH: 75-20-1001, MCA
IMP: 75-20-1001, MCA

REASON: The proposed amendment to (1) removes the number of days following cessation of a geothermal exploration project by which a final report would need to be filed with the department. The filing of a final report is required and there is no need for the department to receive the report by a certain deadline. Currently in the MFSA rules, the only facility to have such deadlines are geothermal exploration applications. This proposed amendment would make all facilities covered under MFSA consistent.

The proposed amendment in (1) and the deletion of (2), (3), and (4) remove the requirement to submit hard copy application materials to the department because the department is moving toward electronic submission of materials.

17.20.206 GEOLOGICAL REPORTS (1) Within 9 months of the initiation of the investigation or 6 months of the completion of the investigation, whichever comes first, and at intervals of 6 months for the duration of the investigation, every person shall submit a geological report to the department in an electronic format acceptable to the department.

~~(2) The geological report shall be typed, printed, or otherwise legibly reproduced on 8-1/2" x 11" paper. Maps, drawings, charts, or other documents bound in a geological report shall be cut or folded to 8-1/2" x11" size. Maps, drawings, or charts may accompany geological reports as separate exhibits.~~

~~(3) Typed or offset material shall have a 1 2 " margin on the binding side and a 1" margin on all other sides.~~

~~(4) All pages in a geological report shall be consecutively numbered. Maps, drawings, or charts accompanying the geological report as exhibits shall be identified as "Exhibit " and, if comprising more than 1 sheet, shall be numbered "sheet __ of __."~~

(5) remains the same, but is renumbered (2).

AUTH: 75-20-1001, MCA
IMP: 75-20-1001, MCA

REASON: The proposed amendment in (1) and the deletion of (2), (3), and (4) remove the requirement to submit hard copy application materials to the

department because the department is moving toward electronic submission of materials.

17.20.301 DEFINITIONS Unless the context requires and clearly states otherwise, in these rules:

(1) through (7) remain the same.

(8) "Associated powerline" means an associated facility consisting of an electrical distribution or transmission line that:

(a) is not a facility defined in 75-20-104~~(8)(c)~~, MCA; and

(b) through (20) remain the same.

(21) "Facility location" means a location for a linear facility accurately depicted to within 250 feet unless otherwise specified by the department by a line one millimeter or less in width drawn on a 1:24,000 map, and which may or may not be surveyed.

(a) and (b) remain the same.

(c) "~~Preferred~~ Proposed facility location" means the applicant's desired location for a linear facility as depicted ~~on overlays~~ in an electronic format acceptable to the department on ~~to~~ the ~~base~~ map described in Circular MFSA-2.

(22) through (33) remain the same.

(34) "Paralleling" means locating a proposed linear facility directly adjacent to or overlapping the right-of-way of an existing linear utility, transportation or communication facility. Paralleling requires that all facilities continue to meet all safety and building code protections.

(35) through (38) remain the same.

(39) "Site" means the parcel of land the applicant would acquire to construct the buildings, components, and nonlinear associated facilities comprising an energy generation ~~or conversion~~ facility.

(a) "Proposed site" means the applicant's proposed location for an energy generation ~~or conversion~~ facility and the site for which a certificate is sought.

(40) through (42) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-104, MCA

REASON: The proposed amendment in (8)(a) corrects the statutory reference. The statutory provision that used to be set forth in 75-20-104(8)(c) is now set forth in 75-20-104(10)(a)(i) through (v), MCA.

The proposed amendment in (21)(c) would change the name of the applicant's desired alternative location from "preferred facility location" to "proposed facility location." The amendment would align with the language of other regulatory requirements, like the Montana Environmental Policy Act (MEPA), which uses the wording of proposed action. Stakeholders have an understanding that the proposed action or proposed facility location is the applicant's proposal that was submitted to the department for a certificate. Calling a certain alternative the preferred alternative prior to the analysis under MEPA and MFSA may sound pre-decisional to some stakeholders, as though the department not the applicant has already selected a favorite alternative.

The proposed amendment in (34) sets forth conditions on the paralleling of existing facilities to take into consideration safety and building codes. Paralleling existing features cannot have their reliability and integrity potentially put into jeopardy with consideration of safety and building codes.

The proposed amendments in (39) remove conversion facilities as MFSA no longer regulates this type of project as set forth in 75-20-104(10), MCA.

17.20.303 FORMAT (1) Documents required by the Act and explained in these rules must be ~~typed, printed, or otherwise legibly reproduced on 8½" x 11" paper, or as otherwise approved in writing by the department~~ electronically submitted to the department.

(2) remains the same.

(3) Maps, drawings, charts, photographs or other illustrations may accompany a document as separate attachments that are sized and scaled appropriately to the material presented. ~~Attachments must be identified as "attachment __.. An attachment comprising more than one sheet must be numbered "sheet ___ of ___."~~

(4) ~~Documents~~ The applicant must state the name, title, telephone number, email address, and post office address of the person to whom communications regarding the ~~document~~ submissions to the department are to be made.

AUTH: 75-20-105, MCA
IMP: 75-20-105, MCA

REASON: The proposed amendment in (1) removes the requirement to submit hard copy application materials to the department because the department is moving toward electronic submission of materials.

The proposed amendment in (3) removes requirements that refer to hard copy application materials because the department is moving toward electronic submission of materials.

The proposed amendment in (4) clarifies unclear instructions that suggest that every document must state the required information in (4). Instead the proposed change simply requires that the applicant provide the required information as part of the application.

17.20.605 CONTENTS OF ~~NOTICE OF~~ REQUEST FOR WAIVER OF REQUIREMENTS RELATING TO CONSIDERATION OF ALTERNATIVE SITES PURSUANT TO 75-20-304(3), MCA (1) For a waiver of provisions described in 75-20-304(3), MCA, the request for waiver must contain information satisfying 75-20-304(3)(d), MCA, which must include an analysis indicating a net positive effect on the county economy. The analysis must include a discussion, with supporting data, of the size of the population influx resulting from direct and indirect employment associated with facility construction and operation, and the cost of providing services to the increased population. The discussion must include the facility's construction period and a portion of the facility's operational period adequate to address the following:

(1) through (4) remain the same, but are renumbered (a) through (d).

AUTH: 75-20-105, MCA
IMP: 75-20-304(3), MCA

REASON: The proposed amendment removes two words from the rule title to better reflect the contents of the existing rule, which does not discuss notice. The renumbering of the rule complies with Secretary of State formatting guidelines.

17.20.802 APPLICATION, NUMBER OF COPIES (1) The applicant shall submit ~~20 copies of~~ the application ~~at the time of filing to the department~~ in an electronic format acceptable to the department~~, PO Box 200901, Helena, MT 59620-0901~~. The applicant ~~may~~ shall submit ~~fewer copies, especially of~~ maps, map overlays, exhibits, appendices, or attachments as defined in ARM 17.20.803(3)(i) and (j), ~~upon prior written approval from the department~~ in an electronic format acceptable to the department. ~~For the contact prints providing photographic coverage, required by ARM 17.20.1418(5) and 17.20.1440(4), one copy is sufficient. The applicant shall promptly furnish one additional copy if requested by the department.~~

AUTH: 75-20-105, MCA
IMP: 75-20-105, MCA

REASON: The proposed amendment in (1) removes the requirement to submit hard copy application materials to the department because the department is moving toward electronic submission of materials.

17.20.803 APPLICATION, FORMAT (1) An application ~~shall~~ must be submitted in ~~a loose leaf~~ an electronic format~~,~~ acceptable to the department ~~except for oversized material such as maps and map overlays~~.

(2) remains the same.

(3) An application ~~shall~~ must be organized according to the following general categories:

(a) through (h) remain the same.

(i) all maps ~~larger than 8½" x 11" in size and aerial photography shall~~ must be ~~presented as an attachment entitled "Attachment A: Maps and Aerial Photography"~~ in an electronic format acceptable to the department;

(j) technical reports, reference or source documents, and other supplementary material provided by the applicant shall be presented as separate, consecutively arranged attachments, beginning with "Attachment ~~B~~A."

AUTH: 75-20-105, MCA
IMP: 75-20-105, MCA

REASON: The proposed amendments in (1) and (3)(i) remove requirements to submit hard copy application materials to the department because the department is moving toward electronic submission of materials.

17.20.806 CHANGES IN AN APPLICATION (1) Pursuant to 75-20-213(2), MCA, an applicant may change or add to an application. The applicant ~~shall~~ must inform the department of the change or addition ~~by certified mailing or personal service~~ in an electronic format acceptable to the department. The applicant shall describe the change in sufficient detail to allow the department to make the determination required by ARM 17.20.807 and ~~shall~~ must supply the information in the form acceptable to the department ~~of substitute pages or insertions to the application as originally filed~~.

AUTH: 75-20-105, MCA
IMP: 75-20-105, 75-20-211, 75-20-213, MCA

REASON: The proposed amendment in (1) removes the required use of hard copy communication methods and application material as the department is moving toward electronic systems.

17.20.807 AMENDMENT TO APPLICATION--NEW APPLICATION (1) The department may determine that a change or addition to an application submitted by the applicant pursuant to ARM 17.20.805 or 17.20.806 requires an amendment to the original application and additional filing fees as provided by 75-20-213, MCA, if the change or addition would be likely to involve the following:

(a) significantly increased or significantly different environmental impacts than would have been likely based on the information contained in the original application;

(b) through (5) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, 75-20-213, 75-20-215, 75-20-216, MCA

REASON: The proposed amendment in (1)(a) is the addition of the clarifying word "significantly" to be more consistent with the rest of the section of the rule, which refers to "significant" changes. The proposed amendment removes any vagueness that could be interpreted with the original text that implied *any* increase.

17.20.901 GENERATION ~~AND CONVERSION~~ FACILITIES, EXPLANATION OF PURPOSE AND BENEFITS OF THE PROPOSED FACILITY (1) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: The proposed amendment removes "conversion facilities" from the title of the rule as MFSA no longer regulates this type of project as set forth in 75-20-104(10), MCA.

17.20.1301 GENERATION ~~AND CONVERSION~~ FACILITIES, EVALUATION OF ALTERNATIVES (1) through (3) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: The proposed amendment removes "conversion facilities" from the title of the rule as MFSA no longer regulates this type of project as set forth in 75-20-104(10), MCA.

17.20.1302 GENERATION ~~AND CONVERSION~~ FACILITIES, CRITERIA FOR EVALUATION OF ALTERNATIVES TO THE PROPOSED FACILITY

(1) through (5) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: The proposed amendment removes "conversion facilities" from the title of the rule as MFSA no longer regulates this type of project as set forth in 75-20-104(10), MCA.

17.20.1418 ENERGY GENERATION ~~AND CONVERSION~~ FACILITIES, BASELINE STUDY, GENERAL REQUIREMENTS (1) through (14) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~ 75-20-213, MCA

REASON: The proposed amendment removes "conversion facilities" from the title of the rule as MFSA no longer regulates this type of project as set forth in 75-20-104(10), MCA.

17.20.1426 LINEAR FACILITIES, GENERAL REQUIREMENTS OF THE ALTERNATIVE SITING STUDY (1) remains the same.

(2) The ~~board~~ department adopts and incorporates by reference ~~department~~ Circular MFSA-2, "Application Requirements for Linear Facilities"~~,~~ 2023 edition, which sets forth the requirements for an alternative siting study and the baseline study requirements and impact assessment to be included in an application for a linear facility. Copies may be obtained from the Department of Environmental Quality, ~~Environmental Management Bureau,~~ P.O. Box 200901, Helena, Montana 59620-0901.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: The department proposes to adopt and incorporate by reference various amendments to Circular MFSA-2 to align the circular with the rule amendments being proposed in this notice. The proposed amendments are summarized as follows:

Amendments are proposed throughout Circular MFSA-2 to remove requirements to submit hard copy application materials to the department because the department is moving toward electronic submission of application material. These amendments are proposed in Sections 2, 3.3, 3.4, 3.6, 3.7, and 3.8.

The proposed amendment in Section 2(13)(c) would change the name of the applicant's desired alternative location from "preferred facility location" to "proposed facility location." The amendment would align with the proposed amendment to the definitions in ARM 17.20.301 and with the language of other regulatory requirements, like the Montana Environmental Policy Act (MEPA), which uses the wording of "proposed action." Stakeholders have an understanding that the proposed action or proposed facility location is the applicant's proposal that was submitted to the department for a certificate. Calling a certain alternative the preferred alternative prior to the analysis under MEPA and MFSA may sound pre-decisional to some stakeholders, as though the department not the applicant has already selected a favorite alternative.

The proposed amendment in Section 2(20) would align the definition of "paralleling" with the proposed amendment to the definitions in ARM 17.20.301 and sets forth conditions on the paralleling of existing features to take into consideration safety and building codes. Paralleling existing features cannot have their reliability and integrity potentially put into jeopardy with consideration of safety and building codes.

The proposed amendment in Section 3.7(2) would add a requirement that the applicant must include military training routes on the baseline mapping for the department. In the past, these have not been on FAA Sectional Maps and are needed in the analysis of overhead facilities.

The proposed amendment in Section 3.10(1)(c) replaces an incorrect internal reference and updates the wording from "preferred" to "proposed" to reflect amendments to the definitions.

Finally, several housekeeping amendments are proposed to correct the numbering of definitions in Section 2 and to correct a grammatical error in Section 3.7(12).

17.20.1501 ENERGY GENERATION ~~AND CONVERSION~~ FACILITIES, GENERAL REQUIREMENTS OF THE FACILITY DESCRIPTION AND DESIGN

(1) An application for an energy generation ~~or conversion~~ facility must contain an engineering description of the facility in detail sufficient to enable the department to assess the environmental impacts of construction, operation, maintenance, and decommissioning, and to assess reliability and construction and operation costs of the proposed facility at the proposed site as specified in ARM 17.20.1502 through 17.20.1505. ~~These requirements apply specifically to fossil-fueled facilities and other facilities that utilize transportable energy resources. An equivalent description and design is required for all energy generation or conversion facilities defined by 75-20-104(8), MCA. Applicants for energy generation or conversion facilities that employ a nontransportable energy resource must consult with the department concerning facility description and design requirements.~~

AUTH: 75-20-105, MCA

IMP: 75-20-211, ~~75-20-503~~ 75-20-213, MCA

REASON: The proposed amendment removes "conversion facilities" from the title of the rule as MFSA no longer regulates this type of project as set forth in 75-20-104(10), MCA.

The proposed amendment in (1) removes fossil-fueled facilities and other facilities that utilize transportable energy resources from the rule as MFSA no longer regulates these types of projects as set forth in 75-20-104(10), MCA.

17.20.1502 ENERGY GENERATION ~~AND CONVERSION~~ FACILITIES, DESIGN CHARACTERISTICS (1) through (5) remain the same.

(6) An application must contain a ~~topographic~~ map, in an electronic format acceptable to the department, ~~at a scale of 1:4800~~ showing the proposed location of all facility structures and nonlinear associated facilities at or associated with the proposed site.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~ 75-20-213, MCA

REASON: The proposed amendment removes "conversion facilities" from the title of the rule as MFSA no longer regulates this type of project as set forth in 75-20-104(10), MCA.

The proposed amendment in (6) removes the use of hard copy application material as the department is moving toward electronic submission of materials.

17.20.1503 ENERGY GENERATION ~~AND CONVERSION~~ FACILITIES, CONSTRUCTION DESCRIPTION (1) remains the same.

(2) An application for a generation ~~or conversion~~ facility must contain a description of the following:

(a) plans for ~~construction camps for the crew, if any, and any other~~ temporary facilities used during construction;

(b) through (f) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~ 75-20-213, MCA

REASON: The proposed amendment removes "conversion facilities" from the title of the rule and in (2) as MFSA no longer regulates this type of project as set forth in 75-20-104(10), MCA.

The proposed amendment in (2)(a) removes construction camps from the rule as the department has determined that construction camps are not a facility pursuant to 75-20-104(10), MCA, or an associated facility pursuant to 75-20-104(3)(a), MCA.

17.20.1509 LINEAR FACILITIES, DESIGN CHARACTERISTICS

(1) through (5) remain the same.

(6) For an electric transmission facility, an application must include an estimate of radio and television interference, and electric and magnetic field strengths. This information on electric and magnetic fields must be provided for cross-sections of the right-of-way and must include maximum conditions under the conductors and at the edge of the right-of-way or easement, and attenuation rates beyond the edge of the right-of-way. ~~This information is also required at the property boundaries surrounding each substation which is proposed to be located in residential or subdivided areas and must include estimates of attenuation rates beyond the property boundaries.~~

(7) through (9) remain the same.

(10) For pipeline, an application must contain a description of the source of power for pump and compressor stations and indicate on maps, in electronic format acceptable to the department, ~~at a scale of 1:24,000,~~ the proposed and alternative location of power supply lines for these stations.

(11) and (12) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~ 75-20-213, MCA

REASON: The proposed amendment in (6) is the removal of information regarding substations. MFSA no longer covers substations pursuant to 75-20-104(3)(b), MCA.

The proposed amendment in (10) removes the use of hard copy application material as the department is moving toward electronic submission of materials.

17.20.1510 LINEAR FACILITIES, ELECTRIC TRANSMISSION FACILITIES, CONSTRUCTION DESCRIPTION (1) through (4) remain the same.

~~(5) An application must contain a description of the camps planned for the construction crew, if any, and how they will be operated.~~

(6) and (7) remain the same, but are renumbered (5) and (6).

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~ 75-20-213, MCA

REASON: The proposed amendment in (5) removes the data regarding the use of construction camps from the rules as the department has determined that construction camps are not a facility pursuant to 75-20-104(10), MCA, or associated facility pursuant to 75-20-104(3)(a), MCA.

17.20.1511 LINEAR FACILITIES, PIPELINE FACILITIES, CONSTRUCTION DESCRIPTION (1) through (8) remain the same.

~~(9) An application must contain a description of the camps planned for the construction crew, if any, and how they will be operated.~~

(10) and (11) remain the same, but are renumbered (9) and (10).

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~ 75-20-213, MCA

REASON: The proposed amendment in (9) removes the data regarding the use of construction camps from the rules as the department has determined that construction camps are not a facility pursuant to 75-20-104(10), MCA, or associated facility pursuant to 75-20-104(3)(a), MCA.

17.20.1605 ENERGY GENERATION ~~AND CONVERSION~~ FACILITIES, DECISIONS (1) through (5) remain the same.

(6) For each facility and associated facilities, a certificate of environmental compatibility must contain:

(a) through (d) remain the same.

(e) a ~~topographic~~ map, in electronic format acceptable to the department, ~~having a scale of 1:24,000~~ showing section lines, the site boundary, location of the facility, facility components, and any associated facility(ies).

(7) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-301, MCA

REASON: The proposed amendment removes "conversion facilities" from the title of the rule as MFSA no longer regulates this type of project as set forth in 75-20-104(10), MCA. The proposed amendment in (6)(e) removes the use of hard copy application material as the department is moving toward electronic submission of materials.

17.20.1801 NOTIFICATION OF PROPOSED CHANGE OR ADDITION TO A FACILITY OR ASSOCIATED FACILITY FOR WHICH A CERTIFICATE HAS BEEN GRANTED (1) If a certificate holder desires to change or add to a facility or associated facility for which a certificate has been granted, the certificate holder shall file a notice for a certificate amendment with the department ~~by certified mail or personal delivery~~ in electronic format acceptable to the department. Changes or additions subject to these requirements include the following:

(1) through (4) remain the same, but are renumbered (a) through (d).

AUTH: 75-20-105, MCA
IMP: 75-20-219, MCA

REASON: The proposed amendment removes the use of hard copy application material and notice as the department is moving toward electronic submission of materials. The renumbering of the rule complies with Secretary of State formatting guidelines.

17.20.1902 LINEAR FACILITIES, MONITORING REQUIREMENTS

(1) through (3) remain the same.

(4) ~~The certificate holder shall submit the following information to the department at~~ At least 15 days prior to the commencement of construction of any segment of the project~~.~~ , the certificate holder shall submit to the department, or

provide appropriate reference to ~~Any~~ information previously submitted in an application ~~may be referenced~~ the following information.

(a) ~~On orthophoto mosaics or~~ In an electronic format acceptable to the department containing the data for the plan and profile maps, or on available USGS 7.5 minute topographic maps~~, at a scale of 1:24,000~~, the location of the following as appropriate:

(i) through (8) remain the same.

(9) If a construction and reclamation bond is required by the certificate pursuant to ~~ARM 17.20.1706(2)~~ 75-20-302, MCA, at the time the construction bond is released by the department, the certificate holder shall submit proof that the reclamation bond has been obtained. Pursuant to the certificate, portions of this bond or bonds may be held for one year and five years, respectively, or until the department determines that revegetation and road closures adequately meet the requirements specified in the certificate and in (10).

(a) through (12) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-301, 75-20-303, 75-20-402, MCA

REASON: The proposed amendment in (4)(a) removes the use of hard copy application material as the department is moving toward electronic submission of materials.

The proposed amendment in (9) replaces an incorrect internal reference with the correct statutory reference for the reclamation bonds.

4. The department proposes to repeal the following rules:

17.4.501 OPPORTUNITY FOR PUBLIC COMMENT AFTER APPLICATION RECEIVED

AUTH: 75-2-111, 75-5-201, 75-20-105, MCA
IMP: 75-20-216(3), MCA

REASON: The department proposes to repeal this rule because it duplicates the public notice process already required under the Montana Environmental Policy Act as well as for other approvals that may be required, including Montana Pollutant Discharge Elimination System (MPDES) permits in ARM Title 17, chapter 30, subchapter 13. MFSA requires the applicant to submit three siting alternatives for review. If the department approves the project, only one alternative would be selected. This rule requires the department to provide public notice of details related to all three alternatives. Regarding the MPDES information, each alternative may have dozens of outfalls. This process is overwhelming and inefficient for applicants, the department, and the public because two of the alternatives would not be selected and thus would not require an MPDES permit. Public comment on the MPDES permit for the selected alternative would still be accepted through the existing process. The public would also still be able to review and comment on all alternatives through the existing MEPA public process.

17.4.502 PUBLIC HEARING AFTER PRELIMINARY DECISION

AUTH: 75-2-111, 75-5-201, 75-20-105, MCA
IMP: 75-20-216(3), 75-20-231, MCA

REASON: The department proposes to repeal this rule as it requires the department to make a preliminary decision on issuing permits for a proposed project, and seek public comment on that preliminary decision, before completing review of the related permit applications or approving the MFSA application. Issuing a preliminary decision on permits prior to the completion of the Montana Environmental Policy Act (MEPA) review is pre-decisional and problematic for the process and project as full analysis has not been completed by the department and new data could impact decision making. This rule is also a duplicate of the existing process required for Montana Pollutant Discharge Elimination System (MPDES) permits in ARM Title 17, chapter 30, subchapter 13.

5. A copy of the proposed amendments to Circular MFSA-2 may be viewed at the department's website using the following path: https://deq.mt.gov/Files/DEQAdmin/MFS/Circulars/Circular2.pdf. Copies may also be obtained by contacting Craig Jones at (406) 444-0514 or crajones@mt.gov.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail at DEQ_MFSA_Rules_Phase1@mt.gov, and must be received no later than 5:00 p.m., May 26, 2023.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the department at the above address no later than 5:00 p.m., May 15, 2023.

8. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be three persons based on the interested parties list that the department keeps.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the department as stated above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules and Circular will not significantly and directly impact small businesses.

/s/ *Nicholas Whitaker*
NICHOLAS WHITAKER
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State April 18, 2023.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.8.1502, 18.8.1503, and 18.8.1505 pertaining to Motor Carrier Services Safety Requirements	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 30, 2023, the Department of Transportation proposes to amend the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Transportation no later than 5:00 p.m. on May 19, 2023, to advise us of the nature of the accommodation that you need. Please contact Jeff Steeger, Department of Transportation, Motor Carrier Services Division, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-4207; fax (406) 444-7681; TYY Service (4800) 335-7592 or through Montana Relay Service at 711; or e-mail jsteeger@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

18.8.1502 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS (1) Any commercial motor vehicle or motor carrier subject to regulation by the department under 61-10-154, MCA, shall comply with and the department adopts by reference the following portions of the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation, subject to the provisions of (2). The regulations adopted are 49 CFR part 373, 49 CFR part 375, 49 CFR parts 377 through 379, 49 CFR part 382, 49 CFR part 383, 49 CFR part 385, 49 CFR part 386 subpart F – Injunctions and Imminent Hazards, 49 CFR part 387, 49 CFR parts 390 through 399, and Appendix G to subchapter B of chapter III, Title 49 of the Code of Federal Regulations, as updated through ~~April 1, 2022~~ April 12, 2023. Copies of the regulations may be obtained from the U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001, or at www.gpo.gov.

(2) remains the same.

AUTH: 61-10-155, MCA
IMP: 61-10-141, 61-10-154, MCA

REASON: The proposed amendment is necessary to adopt any federal motor carrier safety regulations adopted, amended or repealed, by the Federal Motor

Carrier Safety Administration between April 1, 2022 and April 12, 2023, thereby assuring MDT's administrative rule associated with commercial vehicle safety substantially complies with the federal motor carrier safety regulations as listed in 61-10-154, MCA.

18.8.1503 TRANSPORTATION OF HAZARDOUS MATERIALS (1) A commercial motor vehicle, motor carrier, or hazardous materials shipper shall comply with and the department adopts by reference the following federal regulations of the U.S. Department of Transportation concerning the transportation of hazardous materials: 49 CFR part 107, 49 CFR part 171, 49 CFR part 172, 49 CFR part 173, 49 CFR part 177, 49 CFR part 178, and 49 CFR part 180. The regulations adopted may be found in the Code of Federal Regulations, Title 49, chapter I, subchapters B and C, as updated through ~~April 1, 2022~~ April 12, 2023. Copies may be obtained from the U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001, or at www.gpo.gov.

AUTH: 61-10-155, MCA
IMP: 61-10-154, MCA

REASON: The proposed amendment is necessary to adopt any federal motor carrier safety regulations adopted, amended or repealed, by the Federal Motor Carrier Safety Administration between April 1, 2022 and April 12, 2023, thereby assuring MDT's administrative rule associated with transportation of hazardous materials substantially complies with the federal hazardous materials regulations as listed in 61-10-154, MCA.

18.8.1505 SAFETY INSPECTION PROGRAM: PURPOSE AND OUT-OF-SERVICE CRITERIA (1) remains the same.

(2) In addition to the federal regulations adopted in ARM 18.8.1502, the safety inspection program will follow Commercial Vehicle Safety Alliance (CVSA), North American Standard Out-of-Service Criteria (~~April 1, 2022~~ April 1, 2023), incorporated by reference. A copy of the North American Standard Out-of-Service Criteria may be obtained from the Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770-6319 or at www.cvsa.org.

(3) remains the same.

AUTH: 61-10-155, MCA
IMP: 61-10-154, MCA

REASON: The proposed amendment is necessary to adopt the most current CVSA (Commercial Vehicle Safety Alliance) North American Uniform "Out-of-Service" criteria. The 2023 changes to the CVSA may be viewed at http://cvsa.org/wp-content/uploads/OOSC-Changes-Letter.pdf.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Jeff Steeger, Department of Transportation, Motor Carrier Services Division, P.O. Box 201001, Helena, Montana,

59620-1001; telephone (406) 444-4207; fax (406) 444-7681; TTY Service at (800) 335-7592 or the Montana Relay Service at 711; or email jsteeger@mt.gov, and must be received no later than 5:00 p.m., May 26, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Jeff Steeger at the above address no later than 5:00 p.m., May 26, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 917 persons based on the current 9,175 active USDOT accounts based in Montana.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available on the Department of Transportation website at www.mdt.mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

11. With regard to the requirements of 2-15-142, MCA, the department has determined that the amendment of the above-referenced rules will not have direct tribal implications.

/s/ Valerie A. Balukas
Valerie A. Balukas
Alternate Rule Reviewer

/s/ Malcolm D. Long
Malcolm D. Long
Director
Department of Transportation

Certified to the Secretary of State April 18, 2023.

BEFORE THE DEPARTMENT OF JUSTICE
AND THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.14.102, 23.14.208, 23.14.209, 23.14.210, 23.14.308, 23.14.309, 23.14.310, 23.14.311, 23.14.312, 23.14.313, 23.14.609, 23.14.610, and 23.14.615, and the repeal of ARM 23.14.1010, 23.14.1011, 23.14.1012, 23.14.1013, 23.14.1014, 23.14.1015, 23.14.1016, 23.14.1017, and 23.14.1018 pertaining to the Board of Crime Control	)	NOTICE OF PROPOSED AMENDMENT AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 28, 2023, the Department of Justice, Board of Crime Control, proposes to amend and repeal the above-stated rules.

2. The Department of Justice, Board of Crime Control, will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice, Board of Crime Control, no later than 5:00 p.m. on May 14, 2023, to advise us of the nature of the accommodation that you need. Please contact Natalia Bowser, Director, Board of Crime Control, 5 S. Last Chance Gulch, P.O. Box 201408, Helena, Montana, 59620; telephone (406) 444-4244; fax (406) 444-4722; or e-mail nbowser@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

23.14.102 BOARD OF CRIME CONTROL FUNCTIONS (1) through (4) remain the same.

(5) Information regarding justice planning and grant administration may be ~~acquired~~ obtained by contacting the board's office at ~~3075 North Montana Avenue~~ 5 South Last Chance Gulch, P.O. Box 201408, Helena, Montana 59620-1408, telephone (406) 444-3604, or fax (406) 444-4722.

Montana Board of Crime Control

Montana Board of Crime Control is administratively attached to the Department of ~~Corrections~~ Justice.

AUTH: ~~44-4-301~~ 2-4-201, MCA
IMP: ~~44-4-301~~ 2-4-201, MCA

REASON: The board's address has changed, and the 2021 Montana Legislature transferred the administrative function and responsibilities for the program from the Department of Corrections to the Department of Justice. The authority and implementation statutes were reviewed and updated.

23.14.208 INCORPORATION OF MODEL RULES (1) remains the same.

AUTH: ~~44-4-301~~ 2-4-201, MCA
IMP: ~~44-4-301~~ 2-4-201, MCA

23.14.209 MAINTENANCE OF POLICY AND PROCEDURE MANUAL FOR INTERNAL MANAGEMENT (1) remains the same.

AUTH: ~~44-4-301~~ 2-4-201, MCA
IMP: ~~44-4-301~~ 2-4-201, MCA

23.14.210 APPLICATIONS FOR FINANCIAL ASSISTANCE (1) remains the same.

AUTH: ~~44-4-301~~ 41-5-1908, MCA
IMP: ~~44-4-301~~ 41-5-1903, MCA

23.14.308 MATCHING RATIOS (1) remains the same.

AUTH: ~~44-4-301~~ 41-5-1908, MCA
IMP: ~~44-4-301~~ 41-5-1904, MCA

23.14.309 MATCHING REQUIREMENTS (1) through (5) remain the same.

AUTH: ~~44-4-301~~ 41-5-1908, MCA
IMP: ~~44-4-301~~ 41-5-1904, MCA

23.14.310 BUDGET REQUIREMENTS (1) remains the same.

AUTH: ~~44-4-301~~ 41-5-1908, MCA
IMP: ~~44-4-301~~ 41-5-1903, 41-5-1904, MCA

23.14.311 GENERAL REQUIREMENTS (1) and (2) remain the same.

AUTH: ~~44-4-301~~ 41-5-1908, MCA
IMP: ~~44-4-301~~ 41-5-1903, MCA

23.14.312 APPLICANTS AGREEMENTS (1) remains the same.

AUTH: ~~44-4-301~~ 41-5-1908, MCA
IMP: ~~44-4-301~~ 41-5-1907, MCA

23.14.313 NONSUPPLANTING REQUIREMENT (1) and (2) remain the same.

AUTH: ~~44-4-301~~ 41-5-1908, MCA
IMP: ~~44-4-301~~ 41-5-1907, MCA

REASON: The authority and implementation statutes were reviewed and updated.

23.14.609 GENERAL DEFINITIONS (1) "Board" means the Board of Crime Control as provided in ~~2-15-2006~~ 2-15-2306, MCA.

(2) through (5) remain the same.

AUTH: 41-5-1908, MCA
IMP: 41-5-1805, 41-5-1903, MCA

REASON: Section 2-15-2006, MCA, was renumbered 2-15-2306, MCA, in 2017, Sec. 25(4), Ch. 384, L. 2017.

23.14.610 REGIONAL PLANNING BOARDS (1) through (4) remain the same.

AUTH: ~~41-5-1008~~ 41-5-1908, MCA
IMP: ~~41-5-812, 41-5-1002, 41-5-1003~~ 41-5-1805, 41-5-1902, 41-5-1903, MCA

REASON: The authority and implementation statutes were renumbered in 1997, Sec. 47, Ch. 286, L. 1997.

23.14.615 REGIONAL DETENTION TASK FORCE (1) and (2) remain the same.

AUTH: ~~41-5-1008~~ 41-5-1908, MCA
IMP: ~~2-15-2006, 41-5-1008, 44-4-301~~ 2-15-2306, 41-5-1908, 44-7-101, MCA

REASON: The authority and implementation statute 41-5-1008, MCA, was renumbered 41-5-1908, MCA, in 1997, Sec. 47, Ch. 286, L. 1997. The other two implementation statutes were renumbered in 2017, Sec. 25(4), Ch. 384, L. 2017.

4. The board proposes to repeal the following rules:

23.14.1010 DEFINITIONS

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

23.14.1011 PURPOSE

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

23.14.1012 APPEAL REVIEW COMMITTEE

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

23.14.1013 RIGHT TO APPEAL

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

23.14.1014 RECORD OF PROCEEDINGS

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

23.14.1015 NOTICE OF REVIEW

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

23.14.1016 COMMITTEE REVIEW PROCEDURE

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

23.14.1017 RECOMMENTATION OF THE APPEAL REVIEW COMMITTEE

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

23.14.1018 BOARD FINAL DECISION

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

REASON: The repeal of these rules is necessary because the 2021 Montana Legislature removed this duty from the Board of Crime Control in House Bill 23, Ch. 83, L. 2021.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Natalia Bowser, Director, Board of Crime Control, 5 South Last Chance Gulch, PO Box 201408, Helena, Montana, 59620; telephone (406) 444-4244; fax (406) 444-4722; or e-mail nbowser@mt.gov. and must be received no later than 5:00 p.m., May 26, 2023.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Natalia Bowser at the above address no later than 5:00 p.m., May 26, 2023.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The number of persons affected is less than 250, therefore a public hearing will be held if 25 or more people request one.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-

mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ DAVID ORTLEY	/s/ AUSTIN KNUDSEN
David Ortley	Austin Knudsen
Deputy Attorney General	Attorney General
Rule Reviewer	Department of Justice

Certified to the Secretary of State April 18, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.29.1611 and 24.29.1616 pertaining to utilization and treatment guidelines and the drug formulary for workers' compensation purposes	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 18, 2023, at 11:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/86479002154
Meeting ID: 864 7900 2154, Passcode: 837520
-OR-
b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 864 7900 2154, Passcode: 837520

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 11, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.29.1611 UTILIZATION AND TREATMENT GUIDELINES (1) The department adopts the utilization and treatment guidelines provided by this rule to set forth the level and type of care for primary and secondary medical services. As provided by 39-71-704, MCA, there is a rebuttable presumption that the Montana Guidelines establish compensable medical treatment for primary and secondary medical services for the injured worker. The applicable utilization and treatment guidelines are available electronically at the web site: http://www.mtguidelines.com; or a printed copy may be obtained for the cost of reproduction from the Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59601-8011. The Montana Guidelines incorporated by reference apply as follows:

~~(a) for medical services provided from July 1, 2011 through June 30, 2014: "Montana Utilization and Treatment Guidelines, 1st edition, 2011";~~

~~(b) for medical services provided July 1, 2014 through June 30, 2015: "Montana Utilization and Treatment Guidelines, 2nd edition, 2014";~~

~~(c) for medical services provided July 1, 2015 through December 31, 2016: "Montana Utilization and Treatment Guidelines, 3rd edition, 2015";~~

~~(d) for medical services provided January 1, 2017 through December 31, 2017: "Montana Utilization and Treatment Guidelines, 4th edition, 2016";~~

~~(e) for medical services provided January 1, 2018 through June 30, 2019: "Montana Utilization and Treatment Guidelines, 5th edition, 2017";~~

~~(f) for medical services provided July 1, 2019 through June 30, 2021: "Montana Utilization and Treatment Guidelines, 6th edition, 2019"; and~~

~~(g) for medical services provided on or after July 1, 2021: "Montana Utilization and Treatment Guidelines, 7th edition, 2021."~~

(a) for medical services provided on or after July 1, 2023: "Montana Utilization and Treatment Guidelines, 8th edition, 2023"; and

(b) all prior Utilization and Treatment Guidelines starting July 1, 2011, are available on the department's website or by contacting the department to request a copy.

(2) through (7) remain the same.

AUTH: 39-71-203, 39-71-704, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1611 to update the medical guidelines for utilization and treatment for workers' compensation purposes. The department simplified the rule by removing specific references to historical treatment guidelines and clarifying that historical treatment guidelines can be accessed online or by contacting the department.

24.29.1616 INCORPORATION BY REFERENCE AND UPDATES TO THE FORMULARY (1) remains the same.

(2) The department adopts and incorporates by reference its formulary as follows:

~~(a) for prescriptions written between January 1, 2019 through December 31, 2019, the October 2018 edition of the ODG Drug Formulary;~~

~~(b) for prescriptions written between January 1, 2020 through December 31, 2020, the October 2019 edition of the ODG Drug Formulary;~~

~~(c) for prescriptions written between January 1, 2021 through June 30, 2021, the October 2020 edition of the ODG Drug Formulary;~~

~~(d) for prescriptions written between July 1, 2021 through June 30, 2022, the April 2021 edition of the ODG Drug Formulary.; and~~

~~(e) for prescriptions written on or after July 1, 2022, the April 2022 edition of the ODG Drug Formulary.~~

(a) for prescriptions written on or after July 1, 2023, the April 2023 edition of the ODG Drug Formulary; and

(b) all prior ODG drug formulary lists starting January 2019, are available on the department's website or by contacting the department to request a copy.

(3) through (5) remain the same.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend this rule to incorporate by reference the updated applicable drug formulary as authorized and required by 39-71-704, MCA. The department simplified the rule by removing specific references to historical drug formularies and clarifying that historical drug formularies can be accessed online or by contacting the department.

4. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., May 26, 2023.

5. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

6. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

9. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 18, 2023.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.5101 pertaining to the amendment by reference of the State of Montana Public Employee Deferred Compensation (457) Plan Document and Trust Agreement	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 24, 2023, the Public Employees' Retirement Board published MAR Notice No. 2-43-634 pertaining to the proposed amendment of the above-stated rule at page 165 of the 2023 Montana Administrative Register, Issue Number 4.

2. The Public Employees' Retirement Board has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Chief Legal Counsel
and Rule Reviewer

/s/ Maggie Peterson
Maggie Peterson
Board President
Public Employees' Retirement Board

Certified to the Secretary of State April 18, 2023.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to public participation and the amendment of ARM 8.111.201 incorporation of model rules, 8.111.202 meetings of the board, and 8.111.602 definitions	))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On March 10, 2023, the Department of Commerce published MAR Notice No. 8-111-200 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 200 of the 2023 Montana Administrative Register, Issue Number 5.

2. No comments or testimony were received.

3. The department has adopted New Rule I (8.111.204) as proposed.

4. The department has amended the above-stated rules as proposed.

/s/ Amy Barnes
Amy Barnes
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Interim Deputy Director
Department of Commerce

Certified to the Secretary of State April 18, 2023.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through V; the amendment of ARM 10.55.601, 10.55.602, 10.55.603, 10.55.604, 10.55.605, 10.55.606, 10.55.701, 10.55.702, 10.55.703, 10.55.704, 10.55.705, 10.55.706, 10.55.707, 10.55.708, 10.55.709, 10.55.710, 10.55.712, 10.55.714, 10.55.715, 10.55.716, 10.55.717, 10.55.718, 10.55.721, 10.55.801, 10.55.802, 10.55.803, 10.55.804, 10.55.901, 10.55.902, 10.55.904, 10.55.905, 10.55.906, 10.55.907, 10.55.908, 10.55.1001, 10.55.1003, 10.55.1101, 10.55.1301, 10.55.1701, 10.55.1801, 10.55.1901, and 10.55.2101; the repeal of ARM 10.55.711 and 10.55.1302; and the transfer of ARM 10.55.607 pertaining to Standards of Accreditation	)	SUPPLEMENTAL NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 7, 2022, the Board of Public Education (board) published MAR Notice No. 10-55-290 pertaining to the public hearing on the proposed adoption, amendment, repeal, and transfer of the above-stated rules at page 1966 of the 2022 Montana Administrative Register, Issue Number 19. On March 24, 2023, the board published the notice of adoption at page 255 of the 2023 Montana Administrative Register, Issue Number 6.

2. The board recently became aware from the Office of Public Instruction and school districts that incoming juniors and seniors may have their plans of study set for the remainder of their high school career, and that the new requirements of 1/2 unit of civics or government and 1/2 unit of economics or financial literacy in ARM 10.55.905 could conflict with other coursework. In order to ensure timely and efficient planning of student schedules, the board has taken action to delay the effective date of ARM 10.55.905(2)(c) and (2)(h) to July 1, 2025.

3. Subsections (2)(c) and (2)(h) of ARM 10.55.905 are amended effective July 1, 2025. All other rules as adopted, amended, repealed, and transferred remain effective July 1, 2023.

4. The replacement pages for this supplemental notice were submitted to the Secretary of State on April 18, 2023.

/s/ McCall Flynn
McCall Flynn
Rule Reviewer

/s/ Madalyn Quinlan
Madalyn Quinlan
Chair
Board of Public Education

Certified to the Secretary of State April 18, 2023.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of an emergency rule closing the Bjornberg Bridge Fishing Access Site in Phillips County	))))	NOTICE OF ADOPTION OF EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) The Milk River is experiencing significant to moderate flooding. The dangerous conditions include high water levels which have flooded the Bjornberg Bridge Fishing Access Site. The high waters are unpredictably eroding the riverbank causing the banks to become unstable and to slough into the fast-moving river flow.

(b) Persons recreating on the fishing access site are at risk of:

(i) unexpectedly being swept into the river; and

(ii) injury or drowning due to unexpected changes to topography obscured by flood waters.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 8 of the 2023 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 12, 2023, to advise us of the nature of the accommodation that you need. Please contact Regina Reynolds, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; or e-mail regina.reynolds@mt.gov.

3. The emergency rule is effective April 13, 2023, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I BJORNBERG BRIDGE FISHING ACCESS SITE EMERGENCY CLOSURE (1) The Bjornberg Bridge Fishing Access Site is located in Phillips County.

(2) The Bjornberg Bridge Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule will expire as soon as the department determines the fishing access site is again safe for occupation and recreation. This will depend on the extent and duration of the flooding in the area. Signs closing the fishing access site will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Regina Reynolds, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail regina.reynolds@mt.gov. Any comments must be received no later than May 26, 2023.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on April 13, 2023.

/s/ Dustin Temple
Dustin Temple
Acting Director
Department of Fish, Wildlife and Parks

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

Certified to the Secretary of State April 13, 2023.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of an emergency rule closing the Alkali Creek Fishing Access Site in Phillips County	))))	NOTICE OF ADOPTION OF EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) The Milk River is experiencing significant to moderate flooding. The dangerous conditions include high water levels which have flooded the Alkali Creek Fishing Access Site. The high waters are unpredictably eroding the riverbank causing the banks to become unstable and to slough into the fast-moving river flow.

(b) Persons recreating on the fishing access site are at risk of:

(i) unexpectedly being swept into the river; and

(ii) injury or drowning due to unexpected changes to topography obscured by flood waters.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 8 of the 2023 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 12, 2023, to advise us of the nature of the accommodation that you need. Please contact Regina Reynolds, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; or e-mail regina.reynolds@mt.gov.

3. The emergency rule is effective April 13, 2023, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I ALKALI CREEK FISHING ACCESS SITE EMERGENCY CLOSURE (1) The Alkali Creek Fishing Access Site is located in Phillips County.

(2) The Alkali Creek Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule will expire as soon as the department determines the fishing access site is again safe for occupation and recreation. This will depend on the

extent and duration of the flooding in the area. Signs closing the fishing access site will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Regina Reynolds, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail regina.reynolds@mt.gov. Any comments must be received no later than May 26, 2023.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on April 13, 2023.

/s/ Dustin Temple
Dustin Temple
Acting Director
Department of Fish, Wildlife and Parks

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

Certified to the Secretary of State April 13, 2023.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of an emergency rule closing the Cree Crossing Wildlife Management Area on the Milk River in Phillips County	))))	NOTICE OF ADOPTION OF EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) The Milk River is experiencing significant to moderate flooding. The dangerous conditions include high water levels which have flooded the lower parking area (the parking area closest to the Milk River) of the Cree Crossing Wildlife Management Area (WMA).

(b) Persons parking in the lower parking area would be at risk of fast-moving currents, unexpectedly being swept into the river, and injury or drowning due to unexpected changes to topography obscured by flood waters.

(c) Persons recreating at the WMA should park at the upper parking area (the parking area furthest away from the Milk River).

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the parking area closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 8 of the 2023 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 12, 2023, to advise us of the nature of the accommodation that you need. Please contact Regina Reynolds, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; or e-mail reginareynolds@mt.gov.

3. The emergency rule is effective April 13, 2023, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

<u>NEW RULE I CREE CROSSING WILDLIFE MANAGEMENT AREA PARTIAL EMERGENCY CLOSURE – LOWER PARKING AREA</u> (1) Cree Crossing WMA is located along the Milk River in Phillips County.

(2) The lower parking area of Cree Crossing WMA (the parking area closest to the Milk River) is closed to all public occupation and recreation as signed.

(3) This rule will expire as soon as the department determines that the lower parking area of Cree Crossing WMA is again safe for public occupancy and recreation. This will depend on the extent and the duration of flooding in the area. Signs closing the lower parking area of Cree Crossing WMA will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Regina Reynolds, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail regina.reynolds@mt.gov. Any comments must be received no later than May 26, 2023.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on April 13, 2023.

/s/ Dustin Temple
Dustin Temple
Acting Director
Department of Fish, Wildlife and Parks

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

Certified to the Secretary of State April 13, 2023.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.3.953, 23.3.954, 23.3.955, 23.3.957, 23.3.960, 23.3.965, 23.3.970, 23.3.974, 23.3.976, 23.3.978, 23.3.980, 23.3.984, 23.3.990, 23.3.991, 23.3.992, 23.3.993, and 23.3.994 pertaining to alcohol analysis	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 10, 2023, the Department of Justice published MAR Notice No. 23-3-268 pertaining to the proposed amendment of the above-stated rules at page 206 of the 2023 Montana Administrative Register, Issue Number 5.

2. The department has amended the following rules as proposed: ARM 23.3.953, 23.3.954, 23.3.955, 23.3.957, 23.3.960, 23.3.965, 23.3.970, 23.3.974, 23.3.976, 23.3.978, 23.3.980, 23.3.984, 23.3.990, and 23.3.991.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

23.3.992 IMPOSITION OF ADMINISTRATIVE FEE FOR ALCOHOL OR DRUG TEST REFUSAL (1) and (2) remain as proposed.

AUTH: ~~61-8-1016~~ 61-8-1019, MCA
IMP: ~~61-8-1016~~ 61-8-1019, MCA

23.3.993 PAYMENT (1) remains as proposed.

AUTH: ~~61-8-1016~~ 61-8-1019, MCA
IMP: ~~61-8-1016~~ 61-8-1019, MCA

REASON: Section 61-8-402, MCA, was repealed in 2021 and was replaced by 61-8-1016, MCA. However, the rulemaking authority currently resides in 61-8-1019, MCA, thereby necessitating a change to these rules' authority and implementation statutes.

23.3.994 FEES DEPOSITED IN STATE SPECIAL REVENUE FUND

(1) remains as proposed.

(2) Funds in the account created in (1) shall be appropriated by the legislature for the purposes provided in ~~61-8-402~~ 61-8-1016, MCA, and shall be distributed in accordance with the Montana Operations Manual accounting policies.

AUTH: ~~61-8-1016~~ 61-8-1019, MCA
IMP: ~~61-8-1016~~ 61-8-1019, MCA

REASON: Section 61-8-402, MCA, was repealed in 2021 and was replaced by 61-8-1016, MCA, which requires the change to the statutory reference in (2). Although 61-8-402, MCA, was repealed and replaced by 61-8-1016, MCA, the rulemaking authority currently resides in 61-8-1019, MCA, thereby necessitating a change in this rule's authority and implementation statutes.

4. No comments or testimony were received.

/s/ DAVID ORTLEY
David Ortley
Deputy Attorney General
Rule Reviewer

/s/ AUSTIN KNUDSEN
Austin Knudsen
Attorney General
Department of Justice

Certified to the Secretary of State April 18, 2023.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.4.201, 23.4.203, 23.4.209, 23.4.210, 23.4.211, 23.4.212, 23.4.213, 23.4.214, 23.4.215, 23.4.216, 23.4.217, 23.4.218, 23.4.219, 23.4.220, 23.4.221, and 23.4.225 pertaining to drug and/or alcohol analysis	))))))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 24, 2023, the Department of Justice published MAR Notice No. 23-4-267 pertaining to the proposed amendment of the above-stated rules at page 168 of the 2023 Montana Administrative Register, Issue Number 4.

2. The department has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ DAVID ORTLEY
David Ortley
Deputy Attorney General
Rule Reviewer

/s/ AUSTIN KNUDSEN
Austin Knudsen
Attorney General
Department of Justice

Certified to the Secretary of State April 18, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.82.102 and 37.86.104 pertaining to Medicaid coverage of abortion services	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 23, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-1024 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2353 of the 2022 Montana Administrative Register, Issue Number 24.

2. The department has amended the above-stated rules as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: Several commenters expressed privacy concerns with the proposed rules and that a woman's right to privacy is specifically protected under the Montana Constitution. Several commenters suggested the proposed rule is an attempt to not comply with the Montana State Constitution and the Supreme Court decision: Armstrong vs. State.

RESPONSE #1: The department disagrees with these comments. The Montana Supreme Court in *Armstrong v. State*,1999 MT 261, 296 Mont. 361, 989 P.2d 364 (Mont. 1999), interpreted the provision in the Montana Constitution recognizing a fundamental right to individual privacy as including a right to personal autonomy over the decision whether to keep or terminate a pregnancy prior to viability. The department does not challenge that conclusion of the Montana Supreme Court in this rulemaking.

This rulemaking addresses only the question of when the Montana Medicaid program will pay for abortion services. Pursuant to the statutes governing the program, the Montana Medicaid program is only authorized to pay for medically necessary services for Medicaid beneficiaries. This rulemaking defines medical necessity for abortion purposes so that the definition cannot be used to authorize payment of elective nontherapeutic abortions, requires the submission of documentation to support the medical necessity of the abortion, and imposes prior authorization/prepayment review, to ensure that the Medicaid program is only paying for abortion services where that statutory limitation is met.

In *Jeannette R. v. Ellery,* 1995 Mont. Dist. LEXIS 795 (1st Jud. Dist., May 22, 1995), the district court found that the Montana statutory requirement to pay for medically necessary health care services meant that the Medicaid program is required to pay

for abortions that are medically necessary, but the court emphasized that its decision "does not conclude that the state of Montana must fund elective, nontherapeutic abortions" and, in fact, stated ""[i]t is clear that the state need not fund nontherapeutic elective abortion"). *Jeanette R.*, 1995 Mont. Dist. LEXIS 795, *26, *29; *see also Id*. at *4 ("this case has nothing to do with indigent women who may seek an elective abortion. In other words, this case has nothing to do with abortions that are not medically necessary, as that determination is made by a physician.").[1] The requirements established in this rulemaking are imposed to ensure that the Montana Medicaid program only pays for services for which there is statutory authority to cover – and that it does not pay for elective, nontherapeutic abortions. While the Montana Supreme Court grounded the right to abortion that it recognized in 1999 in *Armstrong* in the Montana Constitution, it also looked to the caselaw of the U.S. Supreme Court and the lower federal courts that, prior to *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), recognized a privacy right in the U.S. Constitution encompassing a right to obtain an abortion. In *Beal v. Doe*, the U.S. Supreme Court held that "the provisions of the Social Security Act do not require a State, as a condition of participation, to include the funding of elective abortions in the Medicaid program." *Beal v.* Doe, 432 U.S. 438, 447 n.15 (1977).[2] In *Maher v. Roe*, the U.S. Supreme Court upheld a Connecticut regulation that required prior authorization for state Medicaid benefits for medically necessary first-trimester abortions and submission of, among other things, the attending physician's certification that the abortion is medically necessary. The U.S. Supreme Court noted that "[t]he decision whether to expend state funds on nontherapeutic abortion is fraught with judgments of policy and value over which opinions are sharply divided. Indeed, when an issue involves policy choices as sensitive as those implicated by public funding of nontherapeutic abortions, the appropriate forum for their resolution in a democracy is the legislature." *Maher v. Roe*, 432 U.S. 464, 479 (1977). The Supreme Court also held that "[i]t is not unreasonable for a State to insist upon a prior showing of medical necessity to insure that its money is being spent only for authorized purposes." *Id.* at 480. That is the department's goal in this rulemaking.

COMMENT #2: Several commenters expressed opposition to the proposed rules and suggest health care provider records already sufficiently document when and why abortions are medically necessary, as they do for all other services.

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[1] The prior authorization/prepayment review of the medical documentation submitted to the Montana Medicaid program to support the medical necessity of the abortion services will be conducted by medical professionals.

[2] A later decision of the U.S. Supreme Court upheld the constitutionality of the Hyde Amendment, the annual appropriations rider that restricts the use of federal funds to pay for abortions provided through the Medicaid program, finding that it did not violate the Due Process or Equal Protection guarantees of the Fifth Amendment or the Establishment Clause of the First Amendment – and that states participating in the Medicaid program had the right to fund only those medically necessary abortions for which they received federal reimbursement. *See, e.g., Harris v. McRae*, 448 U.S. 297 (1980).

RESPONSE #2: The department acknowledges the commenters' contention that health care provider records sufficiently document when and why abortions are medically necessary. However, none of that documentation is currently submitted to the Medicaid program, so that the program may ensure that it only pays for medically necessary abortion services. If, as the commenters suggest, health care provider records already document the medical necessity of such abortions, the requirement to submit such documentation (and other, routinely kept medical records) should impose little burden on such abortion providers.
The Montana Medicaid program proposed to institute consistent documentation requirements. This decision was made following the in-depth review of abortion claims paid by Montana Medicaid, as directed by the 2021 Montana legislature. The review concluded that when additional documentation was submitted it often lacked sufficient diagnosis or other information to support medical necessity. Instead, the claims typically correlated to an assessment of the situation, rather than documentation to support the medical necessity. With respect to the need for documentation to support medical necessity, please also see the proposal notice.

COMMENT #3: A commenter expressed opposition to the proposed amendment and suggests existing provisions of the Hyde Amendment already limit access to abortions, and the proposed restrictions would create unnecessary administrative hurdles, increase costs, and deny coverage for medically necessary health care.

RESPONSE #3: It is the department's responsibility to ensure compliance with federal and state laws. The Hyde Amendment limits when federal funds can be utilized for abortion services. As interpreted by the *Jeannette R.* district court, state Medicaid statutes require the department to pay for medically necessary abortion services, regardless of whether such abortions meet the requirements of the Hyde Amendment for federal funding – but do not require the department to pay for elective, nontherapeutic abortions. The provisions proposed in MAR Notice No. 37-1024 that the department finalizes here serve to ensure Montana adheres to such statutory restrictions.

COMMENT #4: Several commenters expressed opposition to the proposed rules and suggest the requirement of a physical exam to determine medical necessity goes against FDA guidelines and clinical best practices which allow telehealth services for the provision of medication abortion.

RESPONSE #4: The department acknowledges that the FDA requirements and guidelines with respect to medication/chemical abortion have recently changed and permit the provision of medication/chemical abortion through telehealth services. The department also recognizes that such requirements and guidelines are being actively litigated. The department's proposal to require documentation of a physical examination and imaging will ensure that the safety and well-being of the female patient – as a Medicaid beneficiary – has been considered. For example, physical examination and imaging are especially important when medication/chemical abortions are being performed, among other things, to ensure the gestational age is

within FDA guidelines on the safety and efficacy of medication/chemical abortions, to rule out ectopic pregnancy, and to screen for potential Rh incompatibility.[3]

COMMENT #5: Several commenters expressed concerns that the proposed rules would limit the abortions that qualify for medical necessity and adding a prior-authorization review could leave many Medicaid enrollees without the care they need. The commenters also expressed concern that prolonging a pregnancy before an abortion is accessible can have negative impacts: abortion services can be more expensive, more invasive for a patient, or require a longer recovery.

RESPONSE #5: The department has a responsibility to ensure that the Montana Medicaid program only provides reimbursement for health care services for which there is statutory authority – i.e., where such services are medically necessary. The regulatory changes being made in this rulemaking – revising the definition of medical necessity for abortion services, requiring submission of documentation to establish medical necessity, and imposing a prior authorization/prepayment review requirement – are designed to ensure that the Medicaid program does not pay for abortions that are not actually medically necessary, but are, in fact, elective, nontherapeutic abortions.

With respect to the commenters' concern that prior authorization could prolong a pregnancy, which could have negative impacts, the department notes that if prior authorization is not obtained – due to an emergency situation or otherwise – the claim will not be automatically denied, but will be subject to prepayment review of the required documentation to ensure medical necessity. Separate from reimbursement, nothing in the proposed rule would expressly prohibit an authorized Medicaid provider operating within their scope of practice from performing an abortion during an emergency situation or otherwise. In addition, the department's contract with the Medicaid utilization review contractor requires completion of the prior authorization or prepayment review within three working days, considering the submission of timely and accurate documentation. Thus, the requirement for prior authorization should add only minimal time to the process.

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[3] The department notes that there are nonfrivolous safety concerns about the FDA's recent changes to certain risk evaluation and mitigation strategies (REMS) imposed on mifepristone and the process by which they were changed. As of the date on which this adoption notice is certified to the Secretary of State, the U.S. Court of Appeals for the Fifth Circuit has refused FDA's request to stay that part of a federal district court decision which preliminarily enjoined/stayed the effective date of FDA's changes to certain REMS in 2016 and 2021/2023, including (1) increase in the maximum gestational age for use from 49 days to 70 day; (2) reduction in required in-person office visits from three to one; (3) authorization for nondoctors to prescribe and administer mifepristone; (4) elimination of reporting of non-fatal adverse events; and (5) removal of the in-person dispensing requirement. *See Alliance for Hippocratic Medicine et al. v. Food & Drug Administration et al.*, 2023 U.S. App. LEXIS 8815 (5th Cir. Apr. 12, 2023). The U.S. Supreme Court has administratively stayed the district court's order.

COMMENT #6: Several commenters expressed opposition to the proposed rules and suggest it is inconsistent with the state's duty to provide safe, legal health care to Montanans. They state the amendments to these rules are unnecessary and harmful.

RESPONSE #6: The department disagrees with the characterization of the state's duty with respect to the Medicaid program: The obligation of the Medicaid program is to pay for statutorily authorized, medically necessary health care for Medicaid beneficiaries. The rule amendments are necessary to ensure that the abortion services for which claims are submitted to the Medicaid program are medically necessary and, thus, that the department only pays for abortion services for which there is statutory authorization.

COMMENT #7: Several commenters expressed opposition to the proposed rules and suggest it unfairly targets lower-income residents who rely on government-provided health insurance by increasing barriers to accessing care.

RESPONSE #7: The department disagrees that the rules unfairly target lower-income residents. Consistent with the purpose of the Medicaid program and the statutory limits on Medicaid coverage of health care services, the purpose of the rules is to ensure that covered abortion services are medically necessary and that the appropriate funds are utilized to pay for them. The department notes that the documentation requirements for prior authorization/prepayment review are borne by the health care providers/facilities providing abortion services for which Medicaid reimbursement is sought, not the Medicaid beneficiaries.

COMMENT #8: Several commenters expressed opposition to the proposed rules and state it has been proven that limiting abortion access does not decrease the total number of abortions, but rather decreases the number of safe abortions, and increases the number of unsafe abortions.

RESPONSE #8: The department disagrees that the rules would have any direct impact on access to abortion. The rules do not prohibit any woman from obtaining an abortion or any health care provider from performing any abortion; they simply identify the requirements that must be met for abortion services to be covered by Medicaid, consistent with the statutory limitations on the program. The department has a strong obligation to ensure that such statutory limitations are being recognized in its administration of the Medicaid program.

COMMENT #9: Several commenters expressed opposition to the proposed rules and stated it should be up to the individuals seeking the abortion to decide if an abortion is right for them, no matter their income level. Commenters expressed that the proposed amendments are intrusive and put bureaucracy in the middle of decisions best left to doctors and patients.

RESPONSE #9: The department denies that the rules would have the impact the commenters suggest. Nothing in the rules preclude individuals from choosing an

abortion. The rules simply address when Medicaid coverage will be available for abortion services provided to Medicaid beneficiaries. Please also see the response to Comment #8.

COMMENT #10: A commenter expressed opposition to the proposed amendment and suggests leading organizations such as the American College of Obstetricians and Gynecologists, the American Medical Association, and the American Academy of Family Physicians strongly oppose efforts to impede access to abortion care or interfere in the relationship between a person and health care provider.

RESPONSE #10: The purpose of the rule amendments is not to impede access to abortion services or to interfere in the relationship between a person and a health care provider, and the department denies that they would unduly impact access to such services or interfere with such relationships. Consistent with law, the rule amendments simply address when Medicaid coverage will be available for abortion services provided to Medicaid beneficiaries. Please also see the response to Comment #8.

COMMENT #11: A commenter expressed opposition to the proposed amendment and suggests the proposed amendment would increase burdens on health care providers, limit the number and types of providers available, and restrict medication abortion, a safe and effective option for ending a pregnancy.

RESPONSE #11: The department is responsible for implementing and operating the Medicaid program in faithfulness to the scope and limitations of the Medicaid program as established by the legislature. This responsibility undergirds these rules. The department recognizes that the rules impose specific documentation requirements to establish the medical necessity of Medicaid-covered abortions and that this may have the effect of putting additional burden on some health care providers. However, the collection of much of the required information is simply good clinical practice and/or information already required to be reported, such as to the department's Office of Vital Records, or otherwise.
As noted in the proposal notice, the Medicaid program can – and does – limit Medicaid payment to services provided by certain types of health care providers, in order to comply with federal and state statutes, to protect the integrity of the Medicaid program, and to protect the health and safety of Medicaid beneficiaries. With respect to medication/chemical abortion, the department agrees that it can be a safe and effective option for ending a pregnancy if the pregnant woman has been screened and meets the requirements for a medication/chemical abortion, if there are no contraindications, if the pregnant woman has been adequately educated on medication/chemical abortion, if there is adequate monitoring, oversight, and follow up, etc. *See also* the response to Comment #4.

COMMENT #12: A commenter expressed opposition to the proposed amendment and quoted, "Abortion is an essential and time-sensitive health care procedure that 1 in 4 people will have before they turn 45 years old." (Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014," by Rachel

Jones and Jenna Jerman, is currently available online and will appear in a forthcoming issue of the American Journal of Public Health). The commenter stated without question, abortion can be medically necessary and health care providers should be able to determine the appropriate care their patients need without the department imposing limitations. By narrowing the abortions that are covered for Medicaid enrollees and requiring prior authorization, the department would be delaying and denying Montanans from getting the abortion care they need which can lead to long-lasting negative outcomes.

RESPONSE #12: The department does not deny that abortion services can be medically necessary – and, to the extent required by the Medicaid statutes and consistent with any statutory limitations imposed on the Medicaid program, will cover such abortion services. The requirements imposed by these rules are designed to ensure that the Medicaid program only pays for abortion services that are medically necessary and that, consistent with the statutory limitations on the program, it does not pay for elective, nontherapeutic abortions.

COMMENT #13: A commenter expressed opposition to the proposed amendment and quoted "Turnaway Study," Bixby Center for Global Reproductive Health, available at https://www.ansirh.org/sites/default/files/publications/files/turnaway_study_brief_web.pdf, further stating studies show that a person who is denied a wanted abortion is more likely to experience life-threatening maternal and infant health complications, more likely to have a household income below the poverty line and experience economic hardship, and more likely to stay in contact with violent partners, putting them and their children at greater risk than if they were able to receive the abortion.

RESPONSE #13: The department acknowledges the Turnaway Study, as well as the methodological criticisms that have been leveled against it (including selection bias, poor participation rate and high attrition).
As noted in response to other comments, the purpose of the rules is to ensure that the department operates the Medicaid program consistent with the statutory limitations on Medicaid coverage of abortion services.

COMMENT #14: A commenter expressed opposition to the proposed amendment saying the state of Montana should ensure the provision of quality health care – including abortion – to all who need it, not only those who have private insurance or who are able to pay for care. The commenter suggests that this amendment, in contrast, will create significant, totally unnecessary physical, emotional, and financial hardship and harm for Montana Medicaid beneficiaries who require abortions.

RESPONSE #14: The department rejects the contention that the rules will create physical, emotional, or financial hardship or harm for Medicaid beneficiaries who need abortions. Consistent with the law, the Montana Medicaid program will continue to cover medically necessary abortions, while imposing certain conditions on Medicaid's payment for abortion services to ensure that integrity and that it is not paying for elective, nontherapeutic abortion services.

COMMENT #15: A commenter expressed opposition to the proposed amendment stating any policies that limit a person's choice to terminate a pregnancy, except for the last three months, consistent with the United States Constitution interpretations, in the words of two of the Justices of the Supreme Court (during their confirmation hearings) "is settled law."

RESPONSE #15: The department acknowledges that the Montana Supreme Court has interpreted the Montana constitutional right to individual privacy as including a right to personal autonomy over the decision whether to keep or terminate a pregnancy prior to viability; similarly, prior to *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the U.S. Supreme Court had recognized a federal constitutional right to privacy that encompassed a right to obtain an abortion. Such constitutional right to obtain an abortion is separate and distinct from whether public funds must pay for such abortions under Medicaid for eligible beneficiaries. Both Montana and federal courts have recognized that there is no requirement that Medicaid pay for elective, nontherapeutic abortions. *See, e.g., Jeannette R v. Ellery*, 1995 Mont. Dist. LEXIS 795, *4, *26, *29 (1st Jud. Dist., May 22, 1995) (decision "does not conclude that the state of Montana must fund elective, nontherapeutic abortions"; "[i]t is clear that the state need not fund nontherapeutic elective abortion"; "this case has nothing to do with indigent women who may seek an elective abortion"); *Maher v. Roe*, 432 U.S. 464, 479-480 (1977) (upholding, against constitutional challenge, Connecticut Medicaid regulation requiring prior authorization for medically necessary first-trimester abortions and submission of attending physician's certification of medically necessity, noting "[i]t is not unreasonable for a State to insist upon a prior showing of medical necessity to insure that its money is being spent only for authorized purposes"). Here, the department's rule amendments do not serve to limit a person's exercise of her constitutional rights, but merely provide greater specificity as to when and under what conditions Medicaid will pay for abortion services for Medicaid beneficiaries.

COMMENT #16: The department received a comment expressing opposition to the proposed rule and stating the department should advocate for the freedom of the individual and ensure the separation of Church and State.

RESPONSE #16: The department rejects the implication that the rules, which address when the Montana Medicaid program will pay for abortion services provided to Medicaid beneficiaries, implicate individual freedom or the Religion Clauses of the Montana or U.S. Constitution.
The department notes that its responsibilities are established by statute. While its mission is to improve and protect the health, well-being, and self-reliance of all Montanans, that mission has to be accomplished consistent with the statutory authority provided by the legislature and with its constitutional and statutory obligations with respect to religious freedom.

COMMENT #17: The department received several comments opposing the amendment. The commenters stated the cost of childbirth and the cost of caring for

a child have a larger financial impact on social welfare programs than the cost of an abortion.

RESPONSE #17: The department acknowledges the comment. However, the purpose of the rules is not to save the State of Montana money, but to ensure that the Medicaid program is carried out consistent with the directives of the legislature, which limit Medicaid payment to medically necessary health care services. Since the rules do not preclude any pregnant beneficiary from obtaining an abortion – but only address when Medicaid will pay for it – and the pregnant beneficiary remains free to obtain an abortion even if Medicaid does not pay for it, the department does not know whether or how implementation of the rules will affect Medicaid childbirth costs or the cost of social welfare programs.

COMMENT #18: Several commenters expressed opposition to the proposed amendment and suggest the current administration has pledged "financial relief" and cutting red tape "to get rid of unnecessary government regulations" and yet, that is all this proposal does. The commenters further suggest that this amendment is contrary to the administration's goal of cutting red tape and reducing government, as well as a politically motivated mandate that focuses on punitive measures and lacks insight as to the results, rather than meeting the mission of DPHHS.

RESPONSE #18: The department rejects the notion that these rules are inconsistent with the administration's regulatory reform initiatives or the department's mission statement. As the commenter notes, the purpose of the regulatory reform initiative is "to get rid of unnecessary government regulations" and/or regulations that are unduly burdensome. Here, the department has determined that the rules are necessary to ensure compliance by providers and facilities that provide abortion services with the Medicaid purpose and limit of providing medically necessary care. As stated in the proposal notice, the results of the in-depth review of Medicaid-reimbursed abortion claims – which found a consistent lack of documentation, coupled with the types of conditions routinely provided on the MA-037 forms as the basis for medical necessity – have caused the department grave concern and led it to reasonably believe that the Medicaid program is paying for abortions that are not actually medically necessary, but are, in fact, elective, nontherapeutic abortions. In such a situation, it is appropriate and consistent with the administration's commitment to the rule of law and program integrity on behalf of Montana taxpayers to impose certain new regulatory requirements to ensure compliance with the statutory limitations on the Medicaid program.
With respect to the department's mission statement, please see the response to Comment #16.

COMMENT #19: Several comments were submitted expressing opposition to the proposed changes and suggesting the prior authorization requirement could prohibit a woman from obtaining an abortion in an emergency.

RESPONSE #19: The department understands the commenters' concerns that there are instances where obtaining prior authorization is not possible. The

department proposed rules and these final rules do not require immediate rejection of claims for reimbursement for abortion services if prior authorization was not obtained. Rather, the rules provide that if prior authorization is not obtained, due to an emergency situation or otherwise, the provider's claim for payment will undergo a post-service, prepayment review. Separate from reimbursement, nothing in the proposed rule would expressly prohibit an authorized Medicaid provider operating within their scope of practice from performing an abortion during an emergency situation or otherwise.

COMMENT #20: A commenter expressed opposition to the proposed amendment and suggests it would only allow reimbursement from physicians and undermines the professional license and scope of practice of advanced practice nurses and PAs.

RESPONSE #20: The department disagrees that the rules undermine the professional license and scope of practice of advanced practice nurses and physician assistants. It noted in the proposal notice the ongoing litigation on whether medical practitioners other than physicians may lawfully perform abortions in the State of Montana. That is a different issue than whether the abortion is covered and eligible for payment under the Montana Medicaid program. The rules do not preclude advanced practice nurses and physician assistants from performing abortions if they are otherwise legally entitled to do so. The rule amendments only address abortion coverage and payment policies under the Montana Medicaid program and do not extend beyond that. DPHHS asserts its right to make such coverage and payment policy determinations under the Medicaid program. Federal regulations prohibit the use of federal funds for abortion services unless a physician certifies in writing, in their professional opinion, the life of the mother would be endangered if the pregnancy were carried to term, or that the abortion is necessary as a result of rape or incest. 42 C.F.R. § 441.201 defines a physician as a doctor of medicine or osteopathy who is licensed to practice in the state. To comply with federal and state statutes, to protect the integrity of the Medicaid program, and to protect the health and safety of Medicaid beneficiaries, the Medicaid program can limit Medicaid payment to services provided by certain types of health care providers, and has done so here.

COMMENT #21: Several commenters expressed opposition to the proposed amendment and stated Montana voters, in rejecting the recent LR-131 referendum, have made clear that Montanans do not support efforts to restrict abortion-related health services. The commenters stated the proposed amendment goes against the will of Montana voters. The commenters expressed a perception that the proposed rule amendment is a way of ignoring the voice of the voters.

RESPONSE #21: Several commenters did not address the proposed rule and instead provided comments in opposition to LR-131, or contended that the proposed rule is a way to circumvent the voters' rejection of LR-131 and enact it through administrative rule. The department disagrees. The rules address when and under what conditions the Montana Medicaid program will pay for abortion services provided to Medicaid beneficiaries. It has nothing to do with the subject of the

referendum, medical services required to be provided to infants born alive after an abortion or otherwise. Furthermore, the department has complied with all of the requirements established by the Montana Administrative Procedure Act for a rulemaking.

COMMENT #22: The department received a comment stating they felt DPHHS thought the amendment would go unnoticed by many Montanans because it is not a bill. The commenter stated it was a sneaky way of denying women health care when time is of the essence.

RESPONSE #22: The department disagrees with the commenter. First, the rules do not deny women health care; the Montana Medicaid program will continue providing coverage of medically necessary abortion services for eligible beneficiaries, with the requirement that the Medicaid provider submit, to the Medicaid program, documentation to support the medical necessity of the services. If time is of the essence for the abortion services (because of an emergency situation or otherwise), Medicaid will not deny the claim because of failure to obtain prior authorization. Rather, the provider can submit the documentation for post-service, prepayment review.
Second, there was sufficient public notice about the proposed rule to provide adequate opportunity for public participation in the rulemaking process. The department testified about the Montana Medicaid program's coverage of abortion services and the lack of supporting documentation during at least one interim committee meeting and indicated that it was considering options to address the issue. Consistent with the Montana Administrative Procedure Act, notice of the proposed amendments to the Medicaid abortion coverage rules (and of the public hearing on the proposed amendments) was published in the Montana Administrative Register and was posted to both the Secretary of State's and the department's website. Copies of the proposal notice were sent to all parties on the department's interested parties list. The proposal notice was covered by various media outlets – and the commenter clearly received notice of the proposed rule amendments. The department held a hearing on the proposed rules, attended by approximately 90 people and at which 30 individuals provided comment, and the department received 474 written submissions on the proposed rule.

COMMENT #23: A commenter expressed opposition to the proposed amendment and suggests there is no reason anyone should ever need to justify wanting to end an unwanted pregnancy. The only reason anyone should ever have a child is that they want to. Removing abortion care from Medicaid will lead to innumerable coercive, traumatic, and dangerous unwanted pregnancies.

RESPONSE #23: The department agrees that, ideally, all children should be loved and wanted. The department has not proposed to remove and is not removing abortion services from coverage under the Montana Medicaid program; and it will continue to cover medically necessary abortion services. The rule amendments provide greater specificity as to when Montana Medicaid funds can be utilized to pay

for abortion services and the documentation that providers will be required to furnish in order to receive Medicaid reimbursement.

COMMENT #24: Several comments were received in opposition stating the department should not be involved in any personal, private medical situations in any way, shape, or form.

RESPONSE #24: To the extent that the comments contend that the department should not be able to receive any personal medical information to support/document medical necessity, the department disagrees. The department is responsible for administering the Montana Medicaid program in accordance with the statutory limitation that Medicaid provide coverage only for medically necessary services. Medical records are necessary to ensure compliance with such limitation, especially when, as here, there may be questions as to whether the service is medically necessary or not. The department takes its obligation to protect this health information seriously. The information itself is protected from improper access, use, and disclosure under the HIPAA Privacy Rule, 45 CFR Parts 160 and 164 Subparts A and E, and Montana's Government Health Care Information Act, Title 50, chapter 16, part 6, MCA. The medical records and other documentation will be reviewed by medical professionals employed by the Montana Medicaid program's utilization review contractor, which is also subject to the requirements (and penalties) of the HIPAA Privacy Rule and the Montana Government Health Care Information Act. The department reminds the commenters that the Montana Medicaid program requires prior authorization for other procedures when medical necessity is in doubt, as well as conducts routine utilization reviews. These customary activities require the handling of sensitive medical records and other documentation.

COMMENT #25: A commenter expressed opposition to the proposed amendment and suggested it would force women to forgo abortions or have them much later in pregnancy, after waiting for paperwork to be approved, if at all, and could result in death.

RESPONSE #25: The department disagrees that the requirement for prior authorization would force women to forgo medically necessary abortions or would expose them to increased risk because of delay. The prior authorization process should not lead to delays in medically necessary care. Pursuant to its contract obligations to the department and the Montana Medicaid program, the department's utilization review vendor must complete requests for prior authorization within three working days considering the submission of timely and accurate documentation. Moreover, as discussed in response to other comments, if prior authorization cannot be obtained, due to an emergency situation or otherwise, the rules provide for post-service, prepayment review of the medical necessity documentation.

COMMENT #26: A commenter expressed opposition to the proposed amendment and stated the requirements interfere with or restrict a provider's ability to provide quality care to all of their patients. This commenter expressed that these restrictions could result in providers leaving the state or choosing to not practice within Montana.

RESPONSE #26: The department disagrees that the rules would restrict a provider's ability to provide quality care to all their patients.

COMMENT #27: The department received a comment in support of the proposed amendment and stated they do not support utilizing taxpayer dollars to pay for abortions.

RESPONSE #27: The department appreciates the support. The purpose of the rule amendments is to ensure that taxpayer funds are only used for medically necessary abortions, consistent with the statutes governing the Medicaid program.

COMMENT #28: A commenter expressed opposition to the proposed amendment. The commenter stated the proposed amendment assumes that some abortions are "medically necessary" while others are "nontherapeutic" or "elective." Abortion is medically necessary, just as all obstetric care and miscarriage care are medically necessary, and there is no reason to single abortion care out from other pregnancy care.

RESPONSE #28: The department disagrees with the commenter's contention that all abortions are medically necessary. The Montana legislature established the Montana Medicaid program "for the purpose of providing necessary medical services to eligible persons who have need for medical assistance." 53-6-101, MCA. As the department has recognized, there are certain medical procedures that, depending on the patient's situation in context, could have a therapeutic purpose or a nontherapeutic purpose. Thus, for example, physician services for conditions or ailments that are generally considered cosmetic in nature are not a benefit of the Medicaid program, unless, through a prior authorization process, it can be demonstrated that the physical and psycho-social wellbeing of the recipient is severely affected in a detrimental manner by the condition or ailment and certain other prior authorization requirements are met. ARM 37.86.104(3). And both state and federal courts have long accepted that certain abortions are not medically necessary, but are rather elective, nontherapeutic abortions for which state Medicaid programs do not have to pay. *See, e.g., Jeannette R. v. Ellery,* 1995 Mont. Dist. LEXIS 795, *26, *29 (1st Jud. Dist., May 22, 1995) (while the department is required to pay for medically necessary abortions through the Medicaid program, its decision "does not conclude that the state of Montana must fund elective, nontherapeutic abortions"; "[i]t is clear that the state need not fund nontherapeutic, elective abortions"); *Maher v. Roe*, 432 U.S. 464, 479-480 (1977) (upholding Connecticut regulation that required prior authorization for state Medicaid benefits for medically necessary first-trimester abortions and holding that "[i]t is not unreasonable for a State to insist upon a prior showing of medical necessity to insure that its money is being spent only for authorized purposes").

COMMENT #29: A commenter expressed opposition to the proposed amendment and suggested the Montana legislature established the Montana Medicaid program "for the purpose of providing necessary medical services to eligible persons who

have need for medical assistance." 53-6-101, MCA. Pregnancy care is essential medical care and abortion care, being an integral part of pregnancy care, is also essential medical care.

RESPONSE #29: Please see the response to Comment #28.

COMMENT #30: A commenter expressed opposition to the proposed amendment. The commenter stated the rules are a continual attack on the rights and agency of the poor and disproportionately affects marginalized groups such as people of color, indigenous, and LGBTQ+ populations.

RESPONSE #30: The department disagrees. The department treats all Montanans served by its programs with dignity and respect. But it is required to operate such programs, including the Medicaid program, in compliance with the statutory requirements imposed by the legislature. The rules seek to ensure, consistent with the Montana statutes governing the Medicaid program, that it covers only medically necessary abortions.

COMMENT #31: A commenter expressed opposition to the proposed amendment and suggests DPHHS admits that requiring preauthorization increases Montana taxpayer costs. Taxpayers should not be on the hook for supporting extreme political agendas.

RESPONSE #31: The potential increase in expenditures resulting from prior authorization or post-service prepayment review is necessary to ensure that the Montana Medicaid program only covers abortion services where required by federal or state law and that it is not covering elective, nontherapeutic abortions.

COMMENT #32: A commenter expressed opposition to the proposed amendment and stated many females are sexually victimized. These victims should not have their right to choose an abortion taken away. They are already traumatized. The choice over their body should never be taken away.

RESPONSE #32: Under the Hyde Amendment, Montana Medicaid statutes, and these rules, the Medicaid program covers abortions when the pregnancy results from rape or incest, as certified by the physician on the MA-037 form; the form does not require the woman to have reported the rape or incest to the appropriate authorities if, in the professional judgment of the physician, she was and is unable to do so. The rules do not impose any documentation requirements in addition to the completed and signed MA-037 for abortions in which Medicaid coverage is sought because the pregnancy is a result of rape or incest. The department notes that upon finalization of the rule, it will closely monitor such claims and take appropriate action if the number of claims for coverage of abortion because of rape or incest spikes and the rates for such abortions exceed historical rates.

COMMENT #33: A commenter expressed opposition to the proposed amendment and suggests it is a "forced birth" amendment.

RESPONSE #33: The department disagrees with the assertion. Under the rules, the department will continue to cover medically necessary abortions. The rule amendment intends to ensure the abortion services covered by Medicaid are medically necessary and statutorily authorized.

COMMENT #34: A commenter expressed opposition to the proposed amendment and suggests roughly 80% of abortions are performed before eight weeks and can be provided by a doctor or midlevel practitioner. They state that safety has been established so why limit access to doctors only.

RESPONSE #34: As discussed earlier, federal regulations prohibit the use of federal funds for abortion services unless a physician certifies in writing, in their professional opinion, the life of the mother would be endangered if the pregnancy were carried to term, or that the abortion is necessary as a result of rape or incest. 42 C.F.R. § 441.201 defines a physician as a doctor of medicine or osteopathy who is licensed to practice in the state. To ensure compliance with federal and state law, to maximize the availability of federal financial participation, to protect the integrity of the Medicaid program, and to protect the health and safety of Medicaid beneficiaries, the Medicaid program can limit Medicaid payment to services provided by certain types of health care providers. In this case, the department will not authorize payment of abortion services unless provided by a physician as defined in 37-3-102, MCA.

COMMENT #35: A commenter expressed support for the proposed amendment stating the proposed rules bring the department's rules in conformity with Jeannette R. v. Ellery to ensure general fund tax dollars are only being used to fund abortions of unborn babies when the procedure is medically necessary and to ensure that there is sufficient documentation to support that taxpayer funded abortions meet the criteria for payment by the Montana Medicaid Program. The commenter stated agreement with the contractor's recommendations and urges the department to adopt the proposed amendment as drafted. The commenter suggests the proposed amendment is not an assault on the Montana Supreme Court's decision in the Armstrong case and it ensures good financial stewardship and faithfulness for the administration of the Montana Medicaid Program. The commenter suggests requiring health care providers to provide greater specificity to medically necessary health care services is not a hindrance to health care, instead, it serves as an important verification that general fund dollars are not being used to fund unnecessary medical procedures. Funding unnecessary medical procedures ultimately reduces the funds reserved to assist qualifying individuals under Montana's Medicaid program.

RESPONSE #35: The department agrees and thanks the commenter for their support of the rule amendment.

COMMENT #36: The department received a comment in opposition stating that the commenter has an appreciation for the department's due diligence and commitment

to adhering to the Hyde Amendment and related court decisions. The commenter stated the requirement to obtain prior authorization adds additional burdens to providers and is a tactic by insurance companies to delay or discourage needed patient care. They assert that physicians spend close to 14 hours per week on prior authorizations which is one of the top administrative burdens leading to physician burnout. The commenter recommends that rather than implement prior authorization requirements the department should require providers to fill the form out in its entirety. They further state that if the department is to pursue adoption it is essential to mandate the department processes the prior authorization requests within 48 hours.

RESPONSE #36: While the department appreciates the commenter's suggestion that it require providers to complete the MA-037 form in its entirety, the department does not believe that such a requirement would be sufficient to ensure that the department is only paying for medically necessary abortions, and is not covering elective, nontherapeutic abortions. With respect to the requirement for prior authorization and the prior authorization process, please see the response to Comment #25.

COMMENT #37: The department received several comments stating the proposed rule amendments would limit access to necessary abortion services for women experiencing miscarriages.

RESPONSE #37: Consistent with the definition of abortion in Montana statutes (*see, e.g.,* 50-20-104 and 50-20-703, MCA), a miscarriage (or spontaneous abortion) does not constitute an abortion for purposes of these rules: The rules specifically provide that prior authorization is not required for incomplete abortions, miscarriages, or septic abortions.

COMMENT #38: The department received several comments in opposition to the rule stating it may require a woman to continue a pregnancy, even if serious fetal abnormalities are detected. Such abnormalities may be incompatible with life upon delivery.

RESPONSE #38: The department acknowledges that, in certain instances, a pregnancy may involve fetal abnormalities. It is the department's understanding that serious fetal abnormalities that are incompatible with life upon delivery are rare. However, there is a possibility that, while the rules would not preclude a woman from obtaining an abortion, the circumstances would not meet the definition of medical necessity and, thus, Medicaid coverage would not be available. Depending on the type of fetal abnormality involved and the method of detection, there is also the possibility of misdiagnosis and/or correction of some abnormalities during fetal development. The department also notes that there may be instances where the fetal abnormality or the development of such fetus may threaten the woman's physical health, consistent with the definition of medical necessity, thus, establishing medical necessity and permitting Medicaid to cover the abortion.

COMMENT #39: The department received a comment in opposition to the proposed rule amendment stating the imposition of a prior authorization requirement creates an unnecessary barrier to care and that the definition of medical necessity is narrow and will lead to widespread denials. The commenter further stated that the requirement for a physical examination prohibits access to telehealth services and will disproportionally harm people living in rural areas.

RESPONSE #39: The department disagrees that the definition of medical necessity is unduly narrow. In defining medical necessity, the department sought to create a balanced definition that would not be overly narrow, nor overly broad, such that the definition could be used to justify Medicaid coverage of elective nontherapeutic abortions.
With respect to the requirement for prior authorizations, please see the responses to Comments #5, #19, #22, and #28.
With respect to documentation of a physical examination and the availability of telehealth, please see the response to Comment # 4.

COMMENT #40: The department received comments from several individuals sharing their personal stories related to how having an abortion impacted their lives.

RESPONSE #40: The department thanks the commenters for participating in the rulemaking process and appreciates the sharing of their personal experiences.

4. These rule amendments are effective May 1, 2023.

/s/ PAULA M. STANNARD
Paula M. Stannard
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State April 18, 2023.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject	1.	Consult ARM Topical Index. Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.
Statute	2.	Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2022. This table includes notices in which those rules adopted during the period November 4, 2022, through March 24, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2022, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2022 or 2023 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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STATE AUDITOR, Office of, Title 6

6-275 Approved Risk List, p. 317

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8-111-200 Public Participation - Incorporation of Model Rules - Meetings of the Board - Definitions, p. 200

(Board of Investments)
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12-592 Public Access Land Agreements, p. 2230, 4, 211
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12-595 Closing the York's Islands Fishing Access Site on the Missouri River in Broadwater County, p. 15

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12-560 Classification of Caracal Cat as a Prohibited Species, p. 950, 2189
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17-421 Review of Storm Water Designs- Individual and Shared Onsite Wastewater Systems - Well Locations, p. 2278, 324

TRANSPORTATION, Department of, Title 18

CORRECTIONS, Department of, Title 20

JUSTICE, Department of, Title 23

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24-22-402 Workforce Innovation and Opportunity Act Montana State Plan OSY Waiver Request, p. 155
24-29-399 Workers' Compensation Medical Fee Schedule, p. 319
24-101-398 Organizational, Procedural, and Public Participation Rules, p. 2331, 300

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32-23-336 Department of Livestock Meat Inspection and Milk and Egg Bureau Fees, p. 226
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32-23-334 Milk Control Assessments, p. 73, 213

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

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37-982 Public Swimming Pools, p. 2239, 179
37-994 Immunization Requirements and Exemptions for Children and Staff at Child Care Facilities, p. 1495, 2190
37-998 Marijuana Sampling Protocols, p. 2243
37-1006 Low Income Home Energy Assistance Program (LIHEAP), p. 228
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37-1013 Montana Tumor Registry, p. 76, 304
37-1015 Laboratories That Conduct Analyses of Public Water Supplies, p. 79, 305
37-1016 Premarital Blood Testing, p. 2256, 180
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42-1062 Updates of the Montana Reappraisal Plan and Classification and Valuation Manuals, p. 2174, 43
42-1063 Agricultural Commodity Prices and Values, p. 2179, 2366
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42-1065 2023 Personal Property Depreciation Schedules and Trend Tables, p. 2186, 2368

SECRETARY OF STATE, Office of, Title 44

44-2-264 Business Services Annual Report Filing Fee Waiver in 2024, p. 9

(Office of the Commissioner of Political Practices)
44-2-263 Payment Threshold–Inflation Adjustment for Lobbyists, p. 2264, 185

EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in March 2023 appear. Potential vacancies from May 1, 2023 through May 31, 2023, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of April 1, 2023.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR MARCH 2023

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Crime Control			
Mrs. Laurie Barron Kalispell Qualifications (if required): Educator Representative	Governor	Reappointed	3/17/2023 1/1/2027
Mr. Eric Bryson Helena Qualifications (if required): MACO Representative	Governor	New	3/17/2023 1/1/2027
Mr. Richard Kirn Poplar Qualifications (if required): Tribal Government Representative	Governor	Reappointed	3/17/2023 1/1/2027
Ms. Beth McLaughlin Helena Qualifications (if required): Judiciary Rep	Governor	Reappointed	3/17/2023 1/1/2027
Ms. Amanda Myers Great Falls Qualifications (if required): U.S. Attorney's Office Representative	Governor	new	3/17/2023 1/1/2027
Honorable Kaydee Ruiz Havre Qualifications (if required): Judiciary Representative	Governor	Reappointed	3/17/2023 1/1/2027

EXECUTIVE BRANCH APPOINTEES FOR MARCH 2023

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Crime Control Cont.			
Ms. Katherine Weston	Governor	Terry Boyd	3/17/2023
Billings			1/5/2025
Qualifications (if required): Corrections Representative			
Board of Real Estate Appraisers			
Mr. Peter T. Christensen	Governor	Myles Link	3/20/2023
Bozeman			4/1/2025
Qualifications (if required): Public Representative			
Board of Livestock			
Ms. Lillian Andersen	Governor	Susan Brown	3/1/2023
Livingston			3/1/2029
Qualifications (if required): Dairy and Poultry Industry Representative			
Mrs. Nina Baucus	Governor	Reappointed	3/1/2023
Wolf Creek			3/1/2029
Qualifications (if required): Cattle Producer			
Mr. William Kleinsasser III	Governor	Ed Waldner	3/1/2023
Augusta			3/1/2029
Qualifications (if required): Swine Producer Representative			

EXECUTIVE BRANCH APPOINTEES FOR MARCH 2023

Appointee	Appointed By	Succeeds	Appointment/End Date
Parks and Recreation Board			
Mr. John Marancik	Governor	Scott Brown	3/20/2023
Laurel			1/1/2027
Qualifications (if required):	District 5 Representative		
Ms. Liz Whiting	Governor	New	3/20/2023
Great Falls			1/1/2027
Qualifications (if required):	District 3 Representative		
Youth Justice Council			
Ms. Christy Hendricks	Governor	Holly Mook	3/22/2023
Helena			3/1/2024
Qualifications (if required):	School violence/vandalism experience		

EXECUTIVE BRANCH VACANCIES – MAY 1, 2023 THROUGH MAY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Board of Directors of the State Compensation Insurance Fund		
Mr. Matthew Mohr, Bozeman	Governor	5/1/2023
Qualifications (if required): Policy holder		
Board of Hail Insurance		
Mr. Gary David Gollehon, Brady	Governor	5/1/2023
Qualifications (if required): Public Member		
Board of Massage Therapy		
Ms. Margaret Holwick, Helena	Governor	5/1/2023
Qualifications (if required): Massage therapist		
Board of Outfitters		
Mr. John Way, Ennis	Governor	5/31/2023
Qualifications (if required): Outfitter licensed for hunting and fishing with fishing business		
Board of Plumbers		
Senator Trudi Schmidt, Great Falls	Governor	5/1/2023
Qualifications (if required): Representative of the public		
Mr. Denver Fraser, Helena	Governor	5/1/2023
Qualifications (if required): Department of Environmental Quality Representative		
Mr. Craig Gilchrest, Glasgow	Governor	5/1/2023
Qualifications (if required): Representative of the public		

EXECUTIVE BRANCH VACANCIES – MAY 1, 2023 THROUGH MAY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Board of Plumbers Cont.		
Mr. Mykal D. Jorgenson, Billings	Governor	5/1/2023
Qualifications (if required): Journeyman Plumber		
Mr. Scott Eugene Lemert, Livingston	Governor	5/1/2023
Qualifications (if required): Master Plumber		
Mr. Karl Carlson, Billings	Governor	5/1/2023
Qualifications (if required): DEQ representative with experience in regulation of drinking water systems		
Board of Real Estate Appraisers		
Ms. Julie A. Forbes, Jefferson City	Governor	5/1/2023
Qualifications (if required): Licensed or certified real estate appraiser		
Mr. Gregory A. Thornquist, Helena	Governor	5/1/2023
Qualifications (if required): Licensed or certified real estate appraiser		
Board of Realty Regulation		
Mr. Frederic E. Ossorio Jr., Big Sky	Governor	5/1/2023
Qualifications (if required): Licensed real estate broker, salesperson, or property manager		
Mr. Joshua Michael Peck, Butte	Governor	5/1/2023
Qualifications (if required): Representative of the public who is not a state government officer		
Mr. Daniel Dean Wagner, Billings	Governor	5/1/2023
Qualifications (if required): Licensed real estate broker, salesperson, or property manager		

EXECUTIVE BRANCH VACANCIES – MAY 1, 2023 THROUGH MAY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Board of Realty Regulation Cont.		
Mr. Kevin Wetherell, Seeley Lake	Governor	5/1/2023
Qualifications (if required): Licensed real estate broker, salesperson, or property manager		
Heritage Preservation and Development Commission		
Mr. Jeffrey Ewelt, Billings	Governor	5/1/2023
Qualifications (if required): Member of the Tourism Advisory Council		
Mr. Timothy Joseph Lehman, Billings	Governor	5/1/2023
Qualifications (if required): Montana Historian		
Ms. Charity Fechter-Shirley, Ennis	Governor	5/1/2023
Qualifications (if required): Public At-Large		
Invasive Species Council		
Ms. Dona Lynn Rutherford, Browning	Governor	5/1/2023
Qualifications (if required): Representative of the Blackfeet Nation and an addition to the Council		
Mr. Bob Cloninger, Helena	Governor	5/1/2023
Qualifications (if required):		
Ms. Jasmine Reimer, Helena	Governor	5/1/2023
Qualifications (if required):		
Mr. Gerald Cobell, Browning	Governor	5/1/2023
Qualifications (if required): Representative of the Blackfeet Nation		

EXECUTIVE BRANCH VACANCIES – MAY 1, 2023 THROUGH MAY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Invasive Species Council Cont.		
Ms. Christy Clark, Helena	Governor	5/1/2023
Qualifications (if required): Department of Agriculture Director		
Ms. Jane Mangold, Bozeman	Governor	5/1/2023
Qualifications (if required): Representative of the Montana State University Extension Service		
Mr. Bryce Christiaens, Missoula	Governor	5/1/2023
Qualifications (if required): County Weed Districts Representative		
Mr. Steve Wanderaas, Vida	Governor	5/1/2023
Qualifications (if required): Representative of conservation districts		
Ms. Amy Gannon, Missoula	Governor	5/1/2023
Qualifications (if required): Representative of the Department of Natural Resources and Conservation		
Mr. Leigh Greenwood, Missoula	Governor	5/1/2023
Qualifications (if required): Representative of conservation organizations		
Mr. Steve Tyrrel, Lavina	Governor	5/1/2023
Qualifications (if required): Representative of agriculture		
Mr. Mike Miller, Helena	Governor	5/1/2023
Qualifications (if required): Representative of the Montana Department of Transportation		

EXECUTIVE BRANCH VACANCIES – MAY 1, 2023 THROUGH MAY 31, 2023

Board/Current Position Holder	Appointed By	Term End
State Compensation Fund Board of Directors		
Ms. Janice S. VanRiper, Helena	Governor	5/1/2023
Qualifications (if required): Policy Holder and Private Enterprise		
Mr. Jack Edward Owens, Missoula	Governor	5/1/2023
Qualifications (if required): Private Enterprise		
Mt. Dexter Thiel, Sidney	Governor	5/31/2023
Qualifications (if required): State Fund policy holder and private enterprise representative		
State Employee Charitable Giving Campaign Advisory Council		
Mr. Gary Owen, Great Falls	Governor	5/1/2023
Qualifications (if required): Federation representative		
Mr. Mike Manion, Helena	Governor	5/1/2023
Qualifications (if required): Chair and Employee representative		
Ms. Hope Stockwell, Helena	Governor	5/1/2023
Qualifications (if required): Employee representative		
Ms. Jasyn Kall-Harrington, Helena	Governor	5/1/2023
Qualifications (if required): Federation representative		
Ms. Sandy Booth, Helena	Governor	5/1/2023
Qualifications (if required): Employee representative		

EXECUTIVE BRANCH VACANCIES – MAY 1, 2023 THROUGH MAY 31, 2023

Board/Current Position Holder	Appointed By	Term End
State Employee Charitable Giving Campaign Advisory Council Cont.		
Ms. Penny Fassett, Helena Qualifications (if required): Employee representative	Governor	5/1/2023
Ms. Kirsten Wrzesinski, Helena Qualifications (if required): Employee Representative	Governor	5/1/2023
Mr. Brett Christian, Helena Qualifications (if required): Employee representative	Governor	5/1/2023
Ms. Samantha Erpenbach, Helena Qualifications (if required): Employee representative	Governor	5/1/2023
Ms. Kathy Ralston, Helena Qualifications (if required): Employee representative	Governor	5/1/2023
State Library Commission		
Ms. Peggy Taylor, Shelby Qualifications (if required): Public member	Governor	5/31/2023
Upper Columbia Conservation Commission		
Ms. Lori Curtis, Whitefish Qualifications (if required): Representative of conservation districts	Governor	5/1/2023

EXECUTIVE BRANCH VACANCIES – MAY 1, 2023 THROUGH MAY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Upper Columbia Conservation Commission Cont.		
Mrs. Stacey Lynn Schnebel, Coram	Governor	5/1/2023
Qualifications (if required): Representative of Electric Cooperatives in the area		
Dr. Jeremy Anderson, Corvallis	Governor	5/1/2023
Qualifications (if required): Conservation, natural resources, or fishing or hunting organization		
Mr. Paul Frederick Bradford, Libby	Governor	5/1/2023
Qualifications (if required): Conservation, natural resources, or fishing or hunting organization		
Mr. Andrew Gorder, Missoula	Governor	5/1/2023
Qualifications (if required): Conservation, natural resources, or fishing or hunting organization		
Mr. Larry Clarence Lack Sr., Thompson Falls	Governor	5/1/2023
Qualifications (if required): Conservation, natural resources, or fishing or hunting organization		
Mr. Robert Rich III, Condon	Governor	5/1/2023
Qualifications (if required): Conservation, natural resources, or fishing or hunting organization		

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CHRISTI JACOBSEN
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620